

SPEAK EVIL OF NO MAN,

B U T

THE INJUSTICE DONE BY MEN,

A

T R E A T I S E.

B Y

JAMES GILKIE Writer in Edinburgh.

'Tis money, money : this alone is merit :

Without it, virtue is an uselefs toy.

Money proclaims the knave a man of honour.

Money alone can make a dunce a judge.

DESPREAUX.

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TO THE RIGHT HONOURABLE
THE LORD HIGH CHANCELLOR
OF GREAT BRITAIN,

TO THE RIGHT HONOURABLE
THE EARL OF SUFFOLK, HIS MA-
JESTY'S PRINCIPAL SECRETARY OF
STATE FOR THE NORTHERN DEPART-
MENT,

A N D

TO THE RIGHT HONOURABLE
THE EARL OF MARCHMONT, ONE
OF HIS MAJESTY'S PRIVY COUNCIL,

The following TREATISE

is most humbly inscribed by

Their LORDSHIPS

most obedient, most obliged,

and most humble servant,

JAS. GILKIE.

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OF GREAT BRITAIN

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J. C.

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PEAK EVIL OF NO MAN, &c.

C H A P. I.

various instances of bad men, raised to the zenith of power, whose passions render them terrible to society, and scourges upon a sinful land, who, like other scourges, are thrown into the fire, after they have executed vengeance upon it.

MANY instances from ancient and modern history, to prove the truth of this could produce, but shall only take notice of Haman, Sejanus, Rufinus, and Eutropius among the ancients.

Haman was an Amalekite, of the posterity of Agag, who was king of Amalek in the time of Saul, and growing to be the chief favourite of King Artaxerxes, all the king's servants were commanded to pay reverence unto him, and bow before him, and all of them obeyed the royal order herein, excepting Mordecai the Jew, who, sitting at the king's gate, according to his office, paid not any reverence to Haman at such times as he passed by into the palace, neither bowed he at all unto him ; of which being told,

A he

he was exceeding wroth ; whereupon, to be revenged, not only upon Mordecai, but also upon all his countrymen, he obtained the king's decree for the destruction of all the Jews, both young and old, little children and women in one day, viz. that day eleven months after the date of the decree. The lot which pointed out that day, seems to have been directed by the special providence of God, that, so long a space intervening, there might be time enough to take such measures as might be proper to prevent the mischief intended ; and Haman soon after this, having incurred the king's displeasure, was hanged upon the same gallows he had erected to hang Mordecai upon, and his immense riches were all forfeited to the king.

Sejanus, who was the chief favourite of Tiberius, is represented by the historians of that age, as a man indefatigable, and patient of the fatigues of business, of a bold and daring spirit, careful to screen himself, and busy to accuse others of a towering pride and condescending flattery ; to outward appearance, one of abstinence and moderation but in his soul a person of insatiable avarice and craving.

Ambition led him to ingross a great number of employments, as his thirst of wealth prompted him to make the most of every one of them. He persuaded his prince to retire from Rome and the weight of business, the

he might have fuller opportunities of gratifying his ambitious desire of holding the reins of the empire; for, though the senate was joined with him in the stile of power, they were but cyphers in the exercise of it, and hence they drew upon themselves the nickname fixed upon them by the people, and were called Sejanus's curs, for this reason, because they fawned upon him, and barked at every body else.

It has often been made a subject of wonder, that considering, so cunning as Sejanus was, and so fickle as he knew Tiberius to be, when he had enjoyed every degree of power, and attained to the topmost round of ambition's ladder, when he had amassed a treasure, exorbitant almost as his wishes could be, that he did not covet to withdraw from employments, that made him the mark of the envy of all the great, and, as he managed it, of the great and small.

The hand of Providence seems to be concerned in continuing these iniquitous state-fallen in employment, till the resentments of their prince, and the justice of their injured country overtake and call them to account. The vengeance of God would not suffer such a wretch as Sejanus to die in peace, whose plots and subornations had spilt the blood of the innocent, and drawn the curse of the blackest crimes upon himself and family; it was necessary he should stand to posterity an

example and monument of the wrath of offended Heaven; and that the outrage and indignity shewed in his punishment, should seem to parallel the rage and monstrosity of his affections: To this end, destruction in the fiercest manner, not only seized his person, but the fury of the populace carried their revenge to the very statues of him, and all the ensigns of his honour, which is thus described by Juvenal.

Down go the titles, and the statue crown'd,
Is by base hand in the next river drown'd;
The guiltless horses, and the chariot-wheel,
The same effects of vulgar fury feel;
The smith prepares the hammer for the stroke,
While the lung'd bellows hissing fire provoke.
Sejanus, almost first of Roman names,
The great Sejanus crackles in the flames;
Form'd in the forge the pliant brass is laid
On anvils, and of head and limbs are made,
Pots, canns and piss-pots, a whole kitchen-trade.

Rufinus professed the Christian religion and was baptised in 364; he never could have gained the esteem of Theodosius without the appearance at least of piety joined to his uncommon talents. Claudian charges him with avarice, ambition, cruelty, perfidiousness, and all the crimes and qualities of which human nature is capable. Suidas and Zozimus speak of him as a great dissembler, and one who trampled under

not all laws, both human and divine, when they stood in the way of his unbounded ambition, and insatiable avarice, of which the historians of that age give the following, among many other instances.

Lucianus was the son of Florentius, prefect of Gaul, in the latter end of the reign of Constantius; and having purchased the favour of Rufinus, by presenting him with such possessions, had been recommended by him to the emperor, who thereupon made him Count of the East, in which office he is said to have acquitted himself with the greatest justice, moderation and integrity; in so much, that he refused to comply with a request of the emperor's uncle, which appeared to him inconsistent with equity. This being misrepresented to Arcadius, Rufinus, instead of protecting one who had purchased his favour at so great a price, left Constantinople, without imparting his design to any one; and hastening to Antioch with a small retinue, entered that city in the dead of the night, caused Lucianus to be apprehended, and, when he was brought before his tribunal, commanded him, though no one appeared against him, to be beaten with lead-balls fastened to cords, till he expired. They also give us an instance of his ambition, &c.: That being disappointed in an alliance he had projected with the royal family, and in order to seize the sovereign power, he

he resolved to set all in a flame, and involve the whole empire in the utmost confusion. With this view, he privately stirred up (by his emissaries) the Hunns and Goths who penetrated as far as Antioch, destroying all with fire and sword, and committing every where unheard of cruelties; at same time the Goths under Alaric, and such other barbarians as were willing to join him, entered Greece, and ravaged all Thrace, Pannonia, Macedon and Thessaly; and when he drew near the straits of Thermopylæ, Geruntius, who guarded them, and was privy to the wicked designs of his patron Rufinus immediately withdrew his troops, and opened a free passage for the barbarians into Greece, where they raged with incredible fury, and over-ran the whole country, razing the temples, pillaging the cities, and committing such ravages and devastation as were felt by the unhappy inhabitants for many years after: The whole country between Dalmatia, the Adriatic gulph and the Euxine sea, was laid waste and turned into a desert, the inhabitants concealing themselves in dens and caves, through fear of being either inhumanly murdered, or carried into captivity.

In order to suppress these barbarians, Stilicho had brought together a formidable army, and was upon the point of engaging the enemy; whereupon Rufinus concluding

that if the barbarians were repressed, the
 storm would fall upon his own head, there-
 fore he prevailed upon Arcadius to send for
 the oriental troops, which was immediately
 done, and Stilicho, in dismissing the forces,
 appointed Gainias a Goth, his intimate
 friend, to conduct them to Constantinople,
 after having imparted to him his design of
 dispatching Rufinus. Under Gainias's con-
 duct, the army arrived in the neighbourhood
 of Constantinople, and the emperor, accord-
 ing to custom, went out in person to meet
 them, attended by Rufinus, who, as he had
 retained over some of the chief officers to pro-
 claim him emperor on this occasion, had al-
 ready prepared the purple, the diadem, and
 the donative for the soldiery. The army re-
 ceived the emperor with all due respect, but
 at the same time, upon a signal given by
 Gainias, they fell upon Rufinus, and cut him
 in pieces, while he was pressing Arcadius to
 declare him his colleague. After his death,
 they cut off his head, and putting a stone in
 his mouth to keep it open, they carried it on
 the point of a spear to Constantinople, where
 it was received with the greatest demonstra-
 tions of joy; they likewise cut off his right
 hand, and carrying it about the streets of
 Constantinople, asked alms for the insati-
 able Rufinus, reduced to beggary.

Eutropius was by birth an Armenian, by
 condition a slave, and had been made an
 eunuch

eunuch soon after his birth, eunuchs being then more in request, and consequently more advantageous to the seller, than common slaves; he had frequently changed masters, and being at length made free, he found means to get into the court, where he was employed in the lowest offices, till he was raised by the interest of Abundantius, who was consul in 393, to a more creditable post; and, upon the death of Rufinus, was invested with the same power and authority which that minister had enjoyed. It appears from the writers of that age, that he surpassed in avarice Rufinus himself, exposing at public sale the chief employments, and entertaining an incredible number of informers, to accuse such persons as were possessors of estates, by that means he conveyed the whole wealth of the empire into his own coffers: The prisons and places of banishment were all filled with unhappy exiles, stripped of their wealth, the only crime for which they had been condemned: By various means he removed some from their offices, others he banished, and some he put to death, and would suffer no person to enjoy any considerable employment in the empire, but such as would blindly obey his orders. He began with Abundantius, by whose means he had been first raised at court. Abundantius had been raised to high offices, being general of both horse and foot, and in 393, to be consul

consular dignity; but Eutropius, jealous of
 the authority and credit which his experi-
 ence and known integrity had procured him
 in court, and panting after the immense
 wealth with which his eminent services had
 been rewarded, prevailed on the weak
 prince, with his crafty and malicious insi-
 nuations, to banish him to Pityus, a city of
 Pontus, to the north of the Euxine sea,
 after being stripped of all his effects: by like
 artifices he procured the banishment of Ti-
 masius, who had the misfortune to incur
 the emperor's jealousy, being one of the chief com-
 manders of the army, and had always ac-
 quitted himself with great honour and inte-
 grity, and possessed great wealth, the reward
 of long and faithful services; but, as instru-
 ments are never wanting on such occasions,
 Eutropius applied to Bargus, a person of
 mean descent, that had been obliged, for some
 notorious crime, to fly from Laodicea in Sy-
 ria, his native city, and retire to Sardis in
 Lydia, where, meeting with Timasius, he
 gave him the command of a cohort, admit-
 ted him into his confidence, and took him
 with him to Constantinople; to Bargus, as a
 proper instrument, Eutropius applied, and
 easily prevailed upon him to betray his friend
 and benefactor; whereupon Timasius being
 accused of treasonable practices, and tried
 by judges of Eutropius's appointment, tho'
 no witness appeared against him but Bar-
 B gus,

gus, he was banished to Oasis, a barren and inhospitable place in Lybia, and stripped of all his wealth; however, Eutropius, who did not chuse to trust a traitor, who had betrayed his friend and benefactor, resolved to get rid of him as soon as possible; and accordingly, having sent him upon some advantageous commission out of Constantinople, during his absence, he induced his wife, who was then at variance with her husband, to present to the emperor some treasonable papers, which she pretended to have found in his custody; hereupon Bargus was, upon his return, arraigned, sentenced to death, and executed. Thus was the crime of that treacherous wretch punished as it deserved, by the very person who had induced him to commit it. The emperor at length, for his own safety, being reduced to the necessity of disgracing Eutropius, he retired for a sanctuary to a church; thereafter having privately left it, was taken and banished to the isle of Cyprus, and thereafter, was tried and convicted of many crimes, and executed.

From modern history I shall confine myself to *Sir Robert Cochran*, prime minister to *James III. of Scotland*, *Peter Landais*, treasurer and chief favourite of *Francis II. Duke of Bretagne*, and *Marshal Dancre*, the reign of *Lewis XIII.* And from the history of England, *Piers Gaveston*, the *Spencer Empson* and *Dudley*, *Cardinal Woolsey*, the *Duke of Buckingham*, and the *Earl of Strafford*.

Sir Robert Cochran was prime minister of King James III. of Scotland, he was meanly born, and meanly bred, had an ignorant head, and a corrupt heart; he drove from the court all persons of honour and great abilities, who might be either an ornament or a service to it, and chused the meanest tools that could be found to be his assistants in all kinds of public business.

The contagion of this minister's corruption raged no where with greater violence than among the clergy. The arrantest tools and thoroughest flatterers his power procured him, were the bishops; in so much, that we read but of one of these holy fathers, who, during his administration, had the virtue to act a part becoming the dignity of his order, and the courage to make a stand in defence of the liberties of his country. The hopes of translations, the lust of richer benefices, and the regulations in regard to the proper methods of being recommended to them, is assigned by Buchanan as the source of this evil; for luxury and avarice, says that learned author, had long been predominant in the members of the church; yet, while virtue was encouraged, and learning rewarded, they retained the appearance, at least of their primitive character; but no sooner was this new road of preferment walked out, when flattery and implicate commission came to be the only necessary qualifications required: all was resolved in-

to the arbitrary will of one, and they soon became a mere dead weight, without liberty or choice, united indeed, but not to seek, to serve, or defend truth or justice, or right, but to promote the designs of those that served them, and favoured their attempts in establishing a spiritual tyranny.

The minister was now grown desperate for the public marks of the people's indignation, (which broke out in all parts of the kingdom, upon his notorious attempts to extend and perpetuate his tyranny), exasperated him to such a degree, that he seemed determined to involve the king and country in his ruin, since he found it inconsistent with his safety to resign his power; but Providence, and the vigilance of his opposers, disappointed in some measure his wicked purposes, and the accession of the Lord High Chancellor to their party, did greatly contribute to facilitate their success; his abilities, judgement, prudence, resolution and integrity, had acquired him universal esteem, and he was more especially valued by those of his own profession; whilst he adhered to the court, his reputation gave credit to their counsels; but finding it in vain to oppose in private the pernicious schemes that were pursued; and that what he recommended or advised, was but little regarded, he entered into concert with those who were united in defence of the constitution, and laboured

laboured to preserve the king, by separating his cause from the minister's.

To counter-balance the growing power of the country-party, a sufficient number of men of low rank, particularly of the inferior clergy, were brought into parliament, who had no right to sit there; but being called by the king's writ, did not sit in subsequent parliaments; however, in this Cochran secured a majority, and though this served the minister in one respect, it hurt him in another, it rendered indeed all attempts towards bringing him to public justice ineffectual; next, it frustrated the very intent of parliaments, making the constitution subservient to the evils it was calculated to prevent; but then it united against him all who breathed sentiments of liberty, and invigorated their resolutions of pulling down a man, whose constant business it was to forge new fetters for his country; so that the only adherents he had left, were a medley of pusillanimous or necessitous slaves, who, when his day came, had not a soul to shew their faces in his defence.

In fine, while the minister went on protecting, negotiating, troubling and corrupting, and the patriots remonstrating, protesting, and opposing, an opportunity offered for the latter, to free their country from this grievance; suffice it to say, that they arrested him, he was tried in the usual form, and hanged

hanged over Lauder bridge in a hair tender; this was made choice of in order to check his ill-timed vanity; for it seems he begged to be hanged in a silken halter.

Peter Landais was treasurer and chief favourite of Francis II. Duke of Bretagne was a tailor's son, and carried matters insolently, that he drew upon himself the hatred of all the Britons. In 1484, it happened, that the great men having combined against him, would have seized him in the very palace; but missing their aim, they found themselves exposed to the favourite's vengeance, who caused them to be declared guilty of high treason; but as the greater part of the country was against him, he believed it best to support himself by some foreign aid.

In the beginning of 1485, Landais, in the name of the duke his master, levied an army to put the sentence against the Lords to execution; and the Lords, on their part, took up arms in their defence. Whilst Bretagne was thus divided, and the two parties ready to come to blows, the condemned Lords caused it to be represented to those who served Landais, that in the present business, the interest of the duke their common master was not concerned, but only his unworthy favourites: that it was unjust to shed the blood of their countrymen in the quarrel of such a man as he, who had not

riously

abusely abused his master's confidence: that therefore, to allay at once the troubles of Bretagne, there was a much more natural and ready way than that of arms, namely, to rid themselves of the minister, which being done, not a soul would be found but that would pay all obedience to the duke.

The Lords of the duke's party having deemed this expedient very reasonable, were of opinion, that it was for the interest of the country, and of the duke himself, that Landais, sole cause of the troubles, should fall a sacrifice to the good of the public. Landais having notice, that the Lords of the two parties were contriving something against him, caused a declaration to be drawn up, wherein the duke ordered all persons of his own army, who held intelligence with the proscribed Lords, should be deemed traitors and rebels, but this only served to hasten his ruin. The chancellor, who was in the plot against him, refused to set the seal to the declaration, and informed the Lords of it, who resolved to have no longer any regard for the favourite; so, without allowing him time to take other measures, they went in a body to the palace, and laid hands upon Landais, in the duke's own apartment, who was fain to deliver him up, on condition they would spare his life, but that was not their design. On the contrary, they brought him to a speedy trial, and having convicted him of a
thousand

thousand crimes, they made him atone for them on the gallows, before the duke knew any thing of the sentence. How much so ever the duke was troubled at the death of his favourite, he could not help granting the Lords of the two armies letters of pardon. Thus Bretagne would have been restored to her former tranquillity, had not the duke been so impolitic (by supporting his favourite against the confederated Lords and the voice of his people) as to concern himself with the troubles of the court of France, which proved the ruin of himself and dukedom.

Marshal Dancre, in the reign of Lewis XIII. was a native of Florence, and came into France a private gentleman of no fortune, in the retinue of Mary of Medicis who, to the misfortune of France, was married to Henry IV. When he found he had gained some ascendant over the queen who was regent (her son being then an infant) thought of nothing but building up a great family; and all the measures, while he had power, were calculated, not for the aggrandizing of France, but his own honour at the expence of France. There was not a man of sense in the kingdom, but who plainly saw it; so that by degrees he became universally odious to the people; but what was worse for him, he, at last, by his overbearing behaviour, made himself disagreeable to the

court to such a degree, that they resolved
 (if possible) to get rid of him; but the ques-
 tion lay in what manner. It was at first pro-
 posed, that he should be accused and tried
 before the parliament of Paris, but many
 objections were made to this way of proceed-
 ing. It was taken for granted, that if he
 was out of the way, by whatever method it
 was effected, the people would be easy; and
 therefore private orders were given to Vitri,
 captain of the guards, to take an opportu-
 nity to dispatch him, which were executed
 by pistol-shot, in the middle of the day, as
 the marshal was passing over the bridge, o-
 ver against the Louvre, on August 24. 1617.
 It may be imagined, that the rumour of
 his stroke ran quickly through all the streets
 of Paris; and the people overjoyed, flew to
 the place of execution, they dragged the bo-
 dy through the streets; till they came to Pont-
 neuf, where it was hung up by the heels up-
 on a gibbet, which was erected for the exe-
 cution of one of this marshal's enemies. Af-
 ter it had hung there for some time, it was
 taken down again, and there was no kind
 of indignity, but what was offered to it;
 and this man, who, one day, saw 100 mer-
 cenary fellows with equipages, and rib-
 bons, and titles, cringing at his levee, was
 the next day dragged through the streets,
 his body cut to pieces, and afterwards broil-

ed upon that fire which was made to celebrate the joy of his fall, and then thrown the dogs to be devoured: for so was the miserable man treated.

The judicious Mr Bayle makes the following remark upon the fate of this man: "His insolence," says he, "gives us a sad example of a strange fatality, which accompanies the French monarchy more than any other government in the world which is, that the kings being always married to foreigners, the queens are obliged to preserve foreign hearts as long as they live, and more than once have been the instruments which God in his wrath hath made use of to humble the pride and punish the sins of the French nation. Two queens of the house of Medicis brought France very near its ruin. What an insufferable thing must it have been to the whole nation, to see their king become the tool, nay, the slave of one man, and to continue so for several years: and what a baseness to observe many of the nobility, who pretended to pique themselves upon their families, cringing to a fellow whom they inwardly despised and detested."

Piers Gaveston was a native of Gascony, and the debaucher of Edward II. in his youth. No sooner was his father dead, than, contrary

to his last command, he recalled Gaveston, and was so unreasonably fond of heaping favours upon him, that he immediately became the richest and most powerful lord of the kingdom.

Edward's coronation oath was no sooner taken than broken. Gaveston had the whole administration in his hands, and governed with an absolute sway; at same time, he filled the court with libertines, buffoons, and parasites, was proud and insolent to the last degree, and so ridiculously vain, as to affect to wear the king's jewels, and even the crown, which Edward took a pleasure to let him do; he would also insult the best of the nobility, passing bitter jests upon them, and giving them nick-names, all this increased the hatred of the Lords against him, and they brought the parliament into their league, who so peremptorily demanded Gaveston's banishment, that the king durst not oppose, but delayed it as long as he could, and continued to heap favours upon him without any bounds or decency; and when he was forced at last to part with him, he did it in such a manner, as to show his great affection for him, by making him governor of Ireland. However, he was soon recalled, and behaved as insolently as ever. By the vigorous resolutions of the barons, Gaveston was banished a second time, but was as soon recalled

ed as before. Upon this, many of the nobility, with the archbishop of Canterbury and many other bishops and barons, resolved to take arms; and, with the utmost expedition, drew together a great body of troops. Edward, in the mean time, appeared quite indolent and unconcerned, and was taking his diversions at York with his favourites. The confederates marched directly for that place, in order to surprise him; whereupon he retired to Newcastle; and not thinking himself safe there, he left it in haste, and shut himself up with Gaveston, in Scarborough castle; from whence he went into Warwickshire to raise troops; but it was too late.

The barons entered Newcastle the day the king had left it, and seized his and Gaveston's rich equipages, which, in their hurry, they had left behind. The king left Gaveston in Scarborough castle, as thinking he was there most secure; but the barons laying siege to it, it surrendered in a few days. Gaveston had capitulated to see the king, and be tried by his peers, which was promised him; and the king wrote to the confederates for that purpose, and conjured them to spare Gaveston's life; but he was carried off to Warwick castle, and there, after a short trial, beheaded.

Soon after this, *Hugh Spencer* and his father became ministers in Gaveston's place, and

made as bad an use of their power as ever Gaveston did; (and the father being made Earl of Winchester), these two ministers had now the whole management of affairs in their hands, and did every thing that their pride, avarice, ambition, or revenge could suggest. This caused so great murmuring and discontent in the nation, that an association was formed against them, and the parliament being met, passed an act for their banishment; which was accordingly put in execution. Soon after this, matters took another turn; and the king having raised an army, under pretence of punishing an affront given by a private person, turned his arms against the whole body of the confederated barons; and thinking himself strong enough to stand against all opposers, recalled the two Spencers, who ceased not to stir him up to further revenge. Many of their enemies were put to death, some fled the kingdom, others were imprisoned, and never had so much English blood been spilt on the scaffold since the Norman conquest.

The revenge of the Spencers was not yet thoroughly satiated, whilst the bishops of Lincoln and Hereford, and Roger Mortimer were still alive. In short, Mortimer was twice condemned to die, and twice pardoned, by means of a powerful intercession with the king; however, he was sentenced to perpetual imprisonment, but found means to

to escape into France. The Spencers knew it was the queen who hindered them from taking full revenge upon Mortimer, and therefore took all opportunities to mortify her; insomuch, as she complained of it to Charles King of France her brother, and was determined to be revenged, though to the ruin of the king her husband.

An opportunity soon offered, by some disputes between Charles and Edward about Guienne. Ambassadors were first sent to France to accommodate matters; but it being signified to Edward, that if the queen went over, she would soon bring her brother to hearken to reasonable terms: she was accordingly desired to go over to France from whence she never returned till she came with an armed force, trusting more to her friends in the kingdom, than to the forces she brought with her; accordingly, she was no sooner landed in 1326, September 2 than the enemies of the Spencers were so diligent in raising troops, that her army soon grew very numerous, and struck a terror into all who had any mind to serve the king being therefore deserted by all, he endeavoured to retire to Ireland, but was driven back on the coast of Wales, and concealed himself in the abbey of Neath. He had left Spencer the father in Bristol, which being soon taken, the old man was immediately hung up in his armour without any formal

y. Search being made for the king, he was soon found, where he lay concealed, having only with him young Spencer, Chancellor Baldock, Simon de Reding, and a few domestics, every body else having deserted him. Young Spencer was hanged on a gibbet fifty feet high, and Simon de Reding on one ten feet lower.

To these I shall add *Empson* and *Dudley*, chief ministers of Henry VII. These gentlemen were lawyers, who, sticking at nothing to humour the king, and fill his coffers, were guilty of such violent extortions and arbitrary measures to squeeze money out of the people as were never known before, and spread an universal terror over the nation. These two infamous ministers, in the beginning of the reign of Henry VIII. were brought to a public trial, when they were found guilty, and soon after beheaded on Towerhill.

Cardinal Woolsey, first minister of Henry VIII. was a butcher's son of Ipswich, and rose to a greater height of power than ever any subject had before him. Soon after his introduction to court, he was made a privy counsellor. In this station he bent his whole study, and employed all his arts, to get an ascendant over the young king. This he effected, by joining to the utmost diligence and application in all the affairs committed to his care, an unlimited compliance with all the

the king's humours and passions, and by accommodating himself to the young courtiers, who were in great favour with the king, as their light and airy temper was more pleasing to his youthful years, than the gravity of his old sage ministers. Woolsey would laugh, rally, sing and dance, and do many other things not very suitable to his character as a clergyman; and, it is even said, he would be subservient to the king's secret pleasures. These servile compliances, and his talents for business, so wrought upon the king, that he made him his prime minister, and gave himself up absolutely to his direction; whilst Woolsey had the address to make him believe he was pursuing and consulting his master's glory and interest when he was only aiming at his own. In short, by these means he became the most wealthy and powerful subject that ever was in so much, that he was not only courted and flattered at home, but even by foreign princes, as they knew what a sway he bore over the king. The absolute power of the minister lasted many years, during which time, he managed all the king's affairs, both foreign and domestic, and did not fail, on all occasions, to discover his intolerable haughtiness, ambition, revenge, and ingratitude to his friends: He soon got his patron, the bishop of Winchester, removed from court, and also the other grave counsellors.

flors, who disliked his conduct, and suffered none to remain but his own creatures, who were sure to be his humble slaves.

After Woolsey was made a cardinal, he became more vain, haughty and imperious than ever, his pride was increased by the king's having given him the chancellorship, which Warham, archbishop of Canterbury resigned, as not able to endure the influence of the cardinal, who was gratified by the king in whatever he had a mind to. He now assumed a sort of sovereign state, and never appeared abroad, without a princely attendance: It is affirmed, that he kept no less than 800 servants, among whom were half a score Lords, fifteen Knights, and forty squires. The cardinal's hat was carried before him on high, like a trophy, and two pillars of silver were borne by two gentlemen: He wore silk in his vestments, and used gold in his horse-trappings, which no English clergyman ever did before. Tho' his vanity and insolence excited an universal indignation, yet none durst give the king the least hint against him; and even foreign princes were cautious of offending him, and strove to preserve his friendship; for such was his power with the king, that, as he was obliged, or disobliged, he could make peace or war, and give a different turn to the affairs of Europe. But, in every thing, his own interest, and not the king's, was the sole mo-

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tive

tive of his actions, tho' Henry was so blind as not to see it.

The cardinal was no friend to parliaments and took several bold steps towards accustoming the king to govern without them. In the 18th year of this reign, commissions were issued out in the king's name, to all the counties of England, for levying a sixth upon the goods and estates of the laity, and fourth upon those of the clergy. This threw the whole nation into a ferment, and, while the cardinal was endeavouring to frighten the city of London into a compliance, the people in the country rose in arms; whereupon the king, by a proclamation, thought fit to declare he had no hand in those violent proceedings to raise money, and so left the whole blame to fall upon the cardinal. This encouraged several other complaints against this minister, at which his majesty was highly incensed, that Woolsey was in danger of being quite out of favour; and though by various artifices, he still kept his ground, yet this affair served a little to clip the wings of this overbearing minister.

The king having resolved to apply to the Pope, to get his marriage with Queen Catherine annulled, (who was his brother Arthur's widow), Cardinal Woolsey undertook that the business should be accomplished; but the crafty Pope, though he had given commission to Woolsey and Campegio his

ate to try the cause in England, gave
 Campeggio private orders, not to pronounce
 sentence, till he had his express commands
 in writing. At last the cause being brought
 to that, that sentence was to be pronoun-
 ced, Campeggio, instead of doing it, adjourn-
 ed the court for some months, and soon
 hereafter, the cause was advocated to Rome,
 and the king cited to appear there by such
 day. Woolsey was now upon the point of
 being disgraced, and under all the terrors
 that an insolent favourite is liable to, upon
 change in his fortune; none being more
 subject in misfortune, than those that are lift-
 ed up with success. The great seal was ta-
 ken from him, and given to Sir Thomas
 More; a bill of indictment was preferred a-
 gainst him upon the statute of premunire,
 for having held legatine courts by a foreign
 authority, contrary to the laws of England,
 other articles were preferred against him,
 upon the same statute. He was found guilt-
 y of both indictments, and declared out of
 the protection of the laws; upon which all
 his goods and effects of an immense value,
 were seized for the king's use; Nevertheless,
 the king, upon his humble petition, granted
 him a protection, and sent him a ring, as a
 token of his favours; upon which he was so
 transported, that he alighted from his horse,
 and fell down upon his knees in a kennel to
 receive it. He was impeached by the house

of Lords in forty-four articles ; however, the king suffered him to enjoy his archbishopric of York; whither he was ordered to retire but he had not been long there, before he was arrested by the Earl of Northumberland for high treason ; this so affected him, that as they were conducting him to London, he died of grief or poison at Leicester-Abbey about the end of November 1530, making great protestations of his constant fidelity to the king, particularly in the matter of the divorce : his last words to the king's officers who stood near his bed were, if I had served God as diligently as I have served the king, he would not have cast me off in my grey hairs, as the king has done. But by all his actions, it is pretty evident, that he served himself more than the king.

George Villiers, afterwards made Duke of Buckingham, being a handsome, personable, well dressed young gentleman, in 1611 engaged the affection of James I. of whom Lord Clarendon observes, that of all women, he was most delighted with handsome persons and fine cloaths : Whereupon Villiers became sole favourite, and ingrossed the king's affection as much as the former had done ; and as he held it longer, he arose to a much higher degree of power, which he used well, but for a short time, whilst he followed the advice of wise and grave men, and afterwards discovered extreme vanity and avarice.

avarice, ambition, and ingratitude to his friends, who were the first means of his rise. The king soon created him Lord Whaddon, Viscount Villiers, and Earl of Buckingham; from this time he ruled with an absolute sway, and disposed of all places and preferments both in church and state, bestowing nothing, as some say, without money or an annual pension. He took care to raise and enrich his relations, who now flocked to court, his elder brother was made Viscount Purbeck, and his younger, Earl of Anglesea; his mother, though a papist, was created Countess of Buckingham; and the governing her son, as he governed the king, the papists met with great encouragement, and began to swarm in the kingdom. He was soon after made Marquis of Buckingham, and Lord high admiral, though he had never been at sea but between Dover and Calais.

The king having the most extravagant notions of his prerogative, and being wholly influenced by this vain, unexperienced, and presumptuous young man; it is no wonder that the rest of this reign, as the former part of it had too much been, was one continued series of misgovernment, bad politics, and arbitrary measures. By these means, two parties were formed in the nation, one for the court, and the other for the people, which

which produced terrible effects in the following reign.

When Charles I. succeeded to the crown in 1625, the Duke of Buckingham, who had been King James's favourite, was yet in a higher degree the favourite of his son King Charles, who of course continued the same counsel, the same ministers and officers of court, and in the country, who were all Buckingham's creatures. The Duke had indeed artfully gained the esteem, and approbation of the last parliament, by giving a false account of his conduct, with regard to the Spanish affairs; but when that affair was more maturely considered, and his successful misrepresentations discovered, where he had imposed upon the late king, his present majesty, the state and the parliament, and that he had drawn the nation into an ill-timed war, for his own private views, he became more than ever, odious to the people, and to the parliament, that met in the beginning of this reign, who impeached him of high crimes and misdemeanors, and used all their efforts to remove him from the king's presence and counsels; whilst the king remained resolutely bent to stand by him, and quarrelled with every one of these parliaments, rather than part with his favourite, which was the chief cause of the animosity between him and his people in the beginning of his reign.

The king, in 1628, having prepared another fleet to relieve Rochel, when the duke of Buckingham (who again was made admiral of the fleet, and commander in chief of the land forces) was at Portsmouth, ready to embark, he was assassinated by one John Felton, formerly a lieutenant in a regiment of foot, who stabbed him to the heart, and he instantly fell down dead. It did not appear that he had any accomplice, and he confessed, that what moved him to it was being persuaded, from the commons late demonstration, that the duke was an enemy to his country, and made him ambitious of being the deliverer of it.

Soon after the dissolution of the third parliament of King Charles I. Thomas Wentworth, a zealous and able declaimer against evinces, not only in that, but the two preceding parliaments, was brought over to the court, and became the king's chief favorite and counsellor. He was made Lord of the North, deputy of Ireland, president of the council in the North, (a court held at York, much like the star-chamber at Westminster,) and at last Earl of Strafford: 10th March 1629, he was impeached of high treason, and taken into custody 11th November 1633, and committed to the Tower some days after. His trial began in May 1641, when the commons turned into a bill of attainder, passed it, and sent it up to the Lords, when,

when after some days debates, the Lords so passed the bill. During all the time this trial, the king was in great perplexity. He made a speech to the Lords in favour of the Earl, and told them, he could not in his conscience condemn him of treason, though he thought his misdemeanors were such that he was not fit for the future to serve him or the commonwealth in any office; not so much as that of a constable; and therefore he hoped they would find some way to satisfy justice and their own fears, without pressing on his conscience. After both houses had passed the bill, and he was pressed to give his assent, he advised with his counsellors, some lawyers and bishops, who persuaded him to it for the public safety; and with much reluctance he passed it, by commission, and after that interceded for him in a letter to the Lords, which he sent by his eldest son Prince Charles. But Strafford had been so much concerned in illegal schemes to raise money during the 11 preceding years, that the nation was without a parliament, and such large strides had been taken towards subverting the laws and constitution during his administration, that the royal intercession did not avail him, and he was beheaded, 22d May 1641.

I shall conclude these instances, &c. with a picture of a good and a bad minister drawn by a masterly hand.

Protector

Protesilaus, favourite of *Idomeneus* king of
alentum, is an instance how dangerous and
destructive a wicked minister is both to the
happiness of prince and people. He conti-
nually represented to Idomeneus, " That if
he suffered the people to live in plenty;
they would work no more, but grow
proud, indocile, and daily more apt to re-
volt: that only weakness and misery
could make them humble, and hinder
them from resisting authority. Again,
he would tell him, that by endeavouring
to ease the people, he derogated from the
regal power, and thereby did irreparable
damage to the people themselves; for it
was necessary they should always be kept
low, for their own quiet and safety."
inculcating these detestable principles
to the head of Idomeneus, and practising
on the property of his subjects, he cau-
sed his royal master to be expelled one king-
dom, and had lost him a second, had not the
Mentor opened the eyes of the delu-
sion prince. In opposition to the infamous
doctrines of *Protesilaus*, he convinced king
Idomeneus, how scandalous it was for a king
to place his safety in the oppression of his
people; and that the very interest of the so-
vereign required, that he should direct all
actions to the public good, he tells him,
That where-ever the command of a prince
is most absolute, there the prince is least
powerful.

" powerful. He takes all, (says he) ruin
 " every thing, and is the only possessor of
 " the whole estate; but then the state languishes,
 " guishes, the country is uncultivated, and
 " almost desert; the towns every day decay
 " and grow thin, and trade sickens and
 " dies. The king, who cannot possibly labour
 " such by himself, and who is only great by the
 " means of his subjects, annihilates and ruins
 " does himself by degrees, in proportion
 " he annihilates or undoes his people,
 " whom he owes both his riches and power.
 " his kingdom is drained both of money and
 " men, and the loss of the latter is the greatest
 " and most irreparable of all losses; arbitrary
 " power makes as many slaves as he has
 " he has subjects, they all seem to adore him,
 " they all tremble at the least glance of his
 " eye; but see what will happen upon the
 " least revolution. This monstrous power, raised
 " wound up to too excessive a height, cannot
 " long endure; it is destitute of support
 " from the hearts of the people; and having
 " tired out and provoked the several degrees
 " of men in the state, it forces all the members
 " of that body to sigh with equal desire
 " for a change; and at the very first
 " blow, the idol is thrown down, broken into
 " pieces, and trampled under foot. Corrupt
 " tempt, hatred, fear, resentment, distrust
 " in short, all the passions unite themselves
 " against so injurious and detestable a power.

The king, who, during the time of his vain prosperity, could find no man, that durst speak the truth to him, shall not find in his misfortunes any one man that will vouchsafe to excuse him, or defend him against his enemies." Idomeneus, convinced of his error by these sage counsels of the wise Mentor, and the loud murmurs and complaints of the whole kingdom, immediately altered his conduct; and, by depriving the wicked Protefilaus of that power of which he had made so ill an use, became the darling and delight of his people, and the glory of his nation, and the most potent and happy among all the princes of Hesperia.

But now let us see Protefilaus in disgrace, we shall by his behaviour perceive, that those who are most insolent in prosperity, are ever the most faint-hearted in adversity.

Hegesippus being sent from the king to seize Protefilaus, and carry him into banishment, he found him (says my author) in his house; it was not so large, but more convenient and pleasanter than the king's, and the architecture of a better gusto. Protefilaus embellished it with greater expences, drawn from the blood of those whom he had made miserable. Protefilaus was at that time in a parlour of marble, near one of his baths, lying carelessly on a couch of purple, embroidered with gold; he seemed weary and spent with his labours,

“ his eyes and eye-brows discovered a for
 “ of disorder and fullen wildness; the prim
 “ men of the kingdom sat round him on
 “ carpets, composing their looks to these
 “ Protefilaus, which they observed, to the
 “ least glance of his eye. Scarce had he o
 “ pened his mouth, ’ere all of them brok
 “ out into accents of admiration at what h
 “ was going to say; one of the principal o
 “ the company repeated to him, with rid
 “ culous exaggerations, what he had don
 “ for the king; another told him, that Jup
 “ ter, having imposed on his mother, was th
 “ author of his life; and that he was son o
 “ the father of the gods. Among the rel
 “ a poet sung verses to him, wherein he r
 “ cited, that Protefilaus being instructed b
 “ the muses, had equalled Apollo in all i
 “ genious performances; another poet, mo
 “ mercenary and impudent, called him
 “ his verses, the inventor of the liberal art
 “ and the father of the people, whom he ha
 “ made happy, describing him with *cornu*
 “ *pia*, or a horn of plenty in his hand. Pr
 “ tefilaus hearkened to these praises with
 “ air of moroseness and disdain, like one wh
 “ knows well enough he deserves even f
 “ greater, and who thinks he shews gre
 “ condescension, when he suffers you
 “ praise him. There was a flatterer, wh
 “ took the liberty to whisper him in the e
 “ some merry observation, touching Me
 “ ton

tor's new polity; at which Protefilaus smiled, and presently the whole assembly burst into a loud laugh, though the greatest part of them knew not the least tittle of what had been said; but Protefilaus soon recovering a severe haughty air, every one put on their former solemn looks, and became silent. Many of the nobles were watching an happy opportunity, when Protefilaus would look towards them, and give them a hearing; they faltered and were disordered, because they had some favours to beg of him, their suppliant postures spoke for them, and they appeared as a mother at the foot of an altar, when she begs of the gods to restore her only son to his health. Every one seemed pleased with, and full of tenderness and admiration for Protefilaus, though in their hearts they mortally hated him."

"At this very moment enters Hegesippus, seizes his sword, tells him from the king, that he is come to carry him to the isle of Samos. At these words, all the arrogance of Protefilaus fell down like a rock, that breaks off from the top of a steep mountain. Now he throws himself trembling at the feet of Hegesippus; he weeps, he falters, he stammers, he quakes, he embraces the knees of that man, whom not an hour before he would not vouchsafe the honour of a look. All those who had

"just

“just now been paying their adorations
 “him, seeing him lost beyond recovery
 “changed their flatteries into the most me-
 “ciless insults.”

Thus the fate of Protefilaus affords us a lively instance of one, who had long waxed in all the luxury of power, falling length a victim to the just indignation of an injured master, and an oppressed kingdom, and, by his fall, a prince restored to the hearts of his people. A manifest proof of the justness of Solomon's observation, “Take away the wicked from before the king, and his throne shall be established in righteousness.”

When we reflect upon the lives and deaths of Haman, Sejanus, Rufinus, Entropius, &c. we cannot fail to observe, that pride, ambition, cruelty and avarice were the sole rulers of their conduct, and by an unrestrained indulgence of these passions, brought terrible calamities upon mankind, and, in the end, proved fatal to themselves.

A word which the ambitious Haman happens to let fall, discovers the whole state of their souls, who abandon themselves to the insatiable desire of honours. He had reached the highest point of fortune to which a mortal could attain, and every one bowed the knee to him, except Mordecai; yet says to his friends in confidence, all this avail me nothing, so long as I see Mordecai to

now sitting at the king's gate. An eminent French poet did not forget this circumstance, and has made a very happy use of it, in the following lines.

*Brought, when an infant, into Persia's state,
I rul'd the empire, where I once was sold.
The richest kings I equal now in wealth;
And bless'd with children who support my pow'r.
The royal diadem alone I have not.
And yet what fatal blindness governs mortals!
The transient sweets of all these mighty honours,
Convey but little pleasure to my heart,
Whilst Mordecai, that sits before the gates
Of the king's palace, racks my tortur'd soul:
And all my grandeur is to me insipid,
Whilst the bright sun beholds that wretch alive. RACINE.*

These examples may suffice to convince us, &c. that power is but a loan from fortune, which she often bestows on the most undeserving and worthless, to require it again with severe interest. Ye great ones turn your eyes to the catastrophe of these men, and learn from thence, that whatever power you possess or enjoy in your exalted stations, unless you use it to the advantage, and for the benefit of your fellow creatures, you certainly abuse the trust put in your hand. If any person should have told these men what was to befall them, when in the height of power, would not they have despised it, like Ahitophel's counsel; but what a lively picture of tyranny, oppression, cruelty

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ty and injustice, &c. doth their lives afford us, and what reason have we to join with Solomon in crying out, *all is vanity of vanities, all is vanity*; for, if ever there was reason thus to cry out, it is certainly on the occasion; and as St Chrysostom, when addressing Eutropius, (who had fled for refuge to the altar), says, which may not only be applied to Eutropius, but to all others who have or may follow the like courses.

“ Where now is the splendor of the most
 “ exalted dignities? where are those marks
 “ of honour and distinction; what is become
 “ of that pomp of feasting and rejoicing
 “ what is the issue of these frequent acclamations
 “ and extravagant flattering encomiums, lavished by a whole people assembled
 “ in the circus to see the public shew
 “ a single blast of wind has stripped the
 “ proud tree of all its leaves, and, after shaking
 “ its very roots, has forced it in an instant
 “ out of the earth; where are those
 “ false friends, those vile flatterers, those parasites
 “ so assiduous in making their court
 “ and in discovering a servile attachment by
 “ their words and actions? all this is gone
 “ and fled away like a dream, like a flower
 “ like a shadow.

“ What man ever rose to such a height of
 “ grandeur? was he not immensely rich
 “ did he not possess every dignity? did not
 “ the whole empire stand in fear of him? and

“ now

now more deserted, and trembling still more than the meanest of unhappy wretches, than the vilest slaves, than the prisoners confined in dungeons; having perpetually before his eyes, swords unsheathed to destroy himself, torments and executioners, deprived of light at noon-day, and expecting every moment that death which perpetually stares him in the face."

"You were witnesses yesterday, when people came from the palace in order to drag him hence, how he ran to the holy altars, shivering in every limb, pale and dejected, scarce uttering a word, but what was interrupted by sobs and groans, and rather dead than alive.

"I see that our temple is as much crouded, as at the solemn feast of Easter, what a lesson does the sight you now behold afford; and how much more eloquent is the silence of this man, reduced to so miserable a condition, than all our discourses; the rich man needs but enter in here, to see the following words of Scripture verified, (Isaiah xli. 7.), "All flesh is grass, and all the goodliness thereof is as the flower of the field, the grass withereth, the flower fadeth, because the Spirit of the Lord bloweth upon it." And the poor man is taught on this occasion to form a quite different judgement of his condition, than he generally does, to be even pleased with his

“poverty, which is to him a sanctuary,
“haven, a citadel, by affording him security,
“ty, and preserving him from those fears
“and alarms which he feels are caused by
“riches,”

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pointing out various instances of oppression, &c. which were destructive to the author and his family.

AFTER I had served a regular apprenticeship, to qualify myself for the business of a writer, at same time struggling with numberless difficulties, occasioned by unforeseen accidents, relating to my private circumstances, I fondly entertained hopes of fixing myself in such a way of business in the county of Berwickshire, where I was born, as might support myself and family in decent manner; and for that end applied to the sheriff of Berwickshire for admission as a procurator; and though put upon trial, and reported sufficiently qualified, yet was denied admission. Alas! the victory carried over me by my opponents, blasted all my hopes, and disabled me from following that business, on which my attention had hitherto been fixed.

The distress I was then under, the ties to family and children, the advice of my counsel, who gave their opinion in writing, that if my case became a general precedent, there would be no security for the life or reputation of any. From all these considerations, I was prevailed on to carry the cause

to the last resort, but was so much exhausted with expence, as disabled me from prosecuting the appeal.

I could not then help thinking, as I do, that the chief end of government was to place individuals in security of their lives, good fame and fortune; and that they might not be betrayed into the loss of any of these, is the source from whence flow all the necessities of criminal procedure; and in such procedure, it is an essential point, and indeed a fixed principle, that the person accused shall be informed circumstantially of the crime laid to his charge, and have proper time allowed him to prepare for his defence. This has been the case in all civilized countries; but, in this country, where the personal security of the subject is pretended more to be regarded than in any other, a further provision is added, *viz.* that besides the crime itself, and the whole circumstances relating to it, the person accused shall be informed of the evidence, by which the prosecution means to establish his libel; and also, that he should have time allowed him to consider the nature of that evidence, and to propose all legal objections against it.

But though my fame and fortune were at stake, I had none of these advantages; a libel was served against me, no time was allowed me to prepare for my defence against all the calumny which the malice of my

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emies had been able to invent. I was never informed of the evidence, that was to be produced, though to many of them I could have offered solid and satisfactory objections, and many of their testimonies could have been redargued by evidence deserving greater credit than theirs. The proof too that had been taken, was carefully kept up from me. My poverty was made one of the strongest objections against me, which certainly shows how cruel and inhuman my opposers were, to make a man's poverty an objection to his being permitted to gain a livelihood. Another material objection insisted on by Sir John Steuart, sheriff of Berwickshire, was, that I had come from the herding, to which I was answered, that if ever Sir John had been a herd, perhaps he had been a herd

In the course of which trial, William Wallace writer in Edinburgh, was made use of to carry the sheriff's point; how far he could be said to have the qualities of an impartial witness, will appear in the sequel, from many letters wrote by him to the deceased James Denham of Crainslaws his father-in-law, which were produced by me in a complaint at my instance, against Mr Wallace, to the court of session, 3d February 1767.

Before I insert these letters, I must ask the reader's indulgence in informing him, that I had the misfortune to be Mr Wallace's apprentice,

prentice, and, in 1757, got my indenture discharged, wherein he declares, I had served honestly and faithfully, and paid 30 merks of apprentice-fee; but being admitted notary in the time of the apprenticeship, Mr Wallace was so much displeased, as to throw out several defamatory expressions which laid me under the disagreeable necessity to prosecute Mr Wallace before the commissaries of Edinburgh. In this action, I obtained, (after two years litigation) a decree, ordaining Mr Wallace to sign a palinode, declaring my innocence of what was laid to my charge, ask pardon of Almighty God, of the court, of the pursuer, and of all good Christians whom he had offended thereby; which palinode Mr Wallace judicially subscribed; (after two bills of advocacy presented by him to the Lords were refused, and by his own consent, and authority of the court, was published in the Edinburgh news-papers.

In his letter of 6th March 1762, he confesses, that he kept the author in prison for five months, for two scraps of an account, which he therein confesses were nearly material. In his letter 11th December 1761, he says, "I sent my lad with the caution, and positive orders to put it in execution, saying, I had got a letter from you pressing for it, whereas I had got none." In a letter to his brother-in-law, he says

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He is not fond of opposing Mr Jamieson's payment, because he has many letters from his wife pressing him to the business, and some of them wrote with his own hand in her name ;" and, in the same letter, further says, " I pressed him hard to execute the caption against Kate, but all will not do ; surely he is put upon, in order to expose the affair to the public."

In Wallace's letter of 15th December 1761, says, " This day Gilkie had the impudence to come to me in the Parliament-house, and desired me to write you, to send in a discharge, and he would pay you. I bid him go be damned for a scoundrel: how had he the impudence to speak to me ; but while I retain my senses shall always disdain such a notorious dog as Gilkie ; and says, it is no wonder he has played his game in the way he has done ; for he has been much encouraged and supported by those who ought to have thrown him down to the lowest pits."

With which complaint there is exhibited at thirty letters after the same strain, and cadence of the tune always the same.

In his letter 6th March 1762, he uses the following expressions: " Lord Kaimes has been waited upon by your friend frequently on this occasion:" And Mrs Wallace, in one of her letters, corrected by Wallace, says, " I came home, got Mr
" Wallace

" Wallace to draw a memorial: I went down
 " to Lord Kaimes's lodging, and asked for
 " a word of him, and told him who I was
 " I gave him the memorial, and shewed him
 " your letter. He was very discreet, and
 " told me he would do all manner of justice
 " to every body, but would do more for
 " me." In another letter she says, " If the
 " doctor (meaning her brother) had got the
 " dy Suttie's letter to Lady President, it had
 " been well for you and him both; but
 " he can get it yet, it will not be amiss.
 In her letter, also corrected by Wallace, dated
 24th February 1762, she says, " If you
 " could get a letter from Sir George Suttie
 " to Lady President, it would serve your
 " turn; for the President is violent on the
 " kie's side." In her letter dated 29th Fe-
 " bruary 1762, " If you would get a letter
 " from Lady Suttie, to her sister Lady Presi-
 " dent, it would do you great service."
 this is not tampering with judges, what
 tampering?

This is the man whom the sheriff of Berks-
 wickshire sustains as an evidence, though his
 oath was emitted within three months after
 signing the palinode. In which deposition
 he solemnly purges himself of malice and ill
 will; but how far justly the preceding
 paragraphs, taken from his own and his wife's
 letters, corrected by himself, will shew
 Which original letters are in the hands

Mr David Ross, one of the principal clerks of session.

However, the sheriff of Berwickshire, building upon this person's deposition, and the deposition of Thomas Cockburn writer of the signet, and agent against me, who had been convicted of giving partial counsel, by presenting, and drawing papers in said cause, which he owns in his deposition, though, at the same time, he purges himself of partial counsel upon oath. Joined to the power of the sheriff's interest, and the force of his resentment, the author and his helpless family fell victims to his revenge.

The reader will perhaps be asking, What was done with Wallace for using such freedoms with the court, and what was the consequence of the complaint brought against him? To this it is answered, That no less than three complaints were given in against him on the same subject, which were all refused by the Court of Session, and I was condemned in payment of one guinea of expence against Wallace ; how far justly, is submitted to the reader.

I had occasion to have no cause of any consequence before the sheriff, for about nine years after this combination formed against me ; by which I was cruelly prevented from providing for myself and family, in the way I was bred ; anxious, however, to provide for
G them,

them, I did not despair, but betook myself to another business, in which I flattered myself, that I would be allowed, without disturbance, to exercise my industry.

Having in the town of Dunse a piece of landed property, which holds of the town of Edinburgh, and intitles me to keep a free mill, entirely free of thirlage, I laid out near L.300 Sterling in erecting a brewery and distillery; my success in this undertaking was answerable to my expectations; for, in the space of six months, I paid the revenue no less than L.70 Sterling; and, in short, had the agreeable prospect of bringing my affairs into a flourishing condition, when my credit was blasted, and myself involved in a variety of tedious and expensive law-suits, owing to a train of operations, in which the sheriff-depute of Berwickshire, and his substitute, the sheriff-clerk of that county, and Alexander Christie junior, writer in Dunse, though not the prime aggressors, were nevertheless not a little instrumental.

In the course of my trade as a brewer and distiller, I wrote to Messrs Atkinson and Hall merchants in Newcastle, desiring them to send me a pocket of their best hops, on the same credit they gave other traders, adding that if they used me well, I would continue dealing with them.

These gentlemen most readily accepted

my commission, and wrote me the following letter:

Newcastle, Oct. 10. 1770.

“ Mr James Gilkie bought of Atkinson
 “ and Hall, a pocket of N. hops,
 “ 1 cwt. 2 qr. 2 lib. L. 7:11:10.

S I R,

“ We have yours of the 1st instant, and have sent as above, *per* Wilson; and it is our opinion that hops of such quality will be dearer: you may have a brown sort about L. 4:15: we will be glad to serve you, and we are,

Your humble servants,

ATKINSON and HALL.”

Directed thus, To Mr James Gilkie, Dunfer-

The reader will be pleased to observe, that along with this letter came the pocket hops, and was delivered at my house, by which the property thereof was fully vested in me; however, a plot was laid violently to carry off the said pocket of hops, in my absence, out of my house, after they had been some time lodged there, and at the time when three of my family were bedfast in a dangerous fever.

Application was made to the sheriff for restoration of my property; but in vain, from what motive the reader may easily judge,

though, as above narrated, I having had no cause of consequence before the Sheriff for nine years prior to this, flattered myself any prejudice against me would have been removed.

Various questions ensued between William the Coldstream carrier, who stole the hops, and William Cochran merchant in Dunse, who reset them, unnecessary here to be fully related; suffice it to say, Atkinson and Hall joined the combination against me; and in order to screen the delinquents, fabricated and antedated the following letter of the same date with the letter sent along with the hops, but which was concealed till forced out of their hands by a diligence from the court of justiciary.

Newcastle, Oct. 10. 1777

Mr James Wilson,

S I R,

“ Mr Gilkie has desired us to send him a pocket of hops: we have forwarded it by your servant, which you may deliver to him upon his paying to you L. 7:11:0 or giving you a good security; and, if he fails in this, we desire you to load him with some of our acquaintances in Dunse, and we will be accountable to you,”

ATKINSON and HALL

I frankly own I could not tamely allow myself

myself to witness a transaction of that nature, which appeared to be framed with no other view, than to ruin me, and which I was then persuaded, could be committed by none but such as were determined to throw off any regard to character; I therefore thought myself obliged to take such steps as the law allowed in my own defence, whereupon I gave in a criminal complaint to the sheriff of Berwickshire against Atkinson and Hall, who had, prior to that, found mention in the sheriff-court books, to stand trial to any action whatever I was to bring against them; and the action brought against them, was for having them punished in their persons and goods for being guilty of antedating, falsifying, and fabricating my destruction.

The sheriff, after long litigation, was obliged to dismiss the action as incompetent, and found them not answerable to his jurisdiction: Thereafter application being made to the court of session by advocacy, their Lordships found the action criminal, and could not judge in it, but reserved action to apply to the court of justiciary as records. Thereafter, that high court, upon reading bill and answers, with the whole process, remit the bill to the sheriff, with instruction to alter his interlocutor, reverse the declinature, hear parties, and give judgement in the cause. The complaint was then

then proceeded in, the real and false letter exhibit, which, with other writs, prove the complaint to the conviction of every honest man ; however, the sheriff, after (as I said) he had considered the process, pronounced these three emphatic words, “ *soilzies the defenders.* ”

Application was again made to the court of justiciary ; and their Lordships, after full reasoning, dismissed the action, and found me liable to Atkinson and Hall forty shillings of expences. Before pronouncing this interlocutor, I apprehended the judgements pronounced by that court were always final, and that they could not undo what they formerly had done ; but, by my sad experience, I in this was mistaken.

At this time, there was also a process depending before the Court of Session at this instance, against the sheriff, his substitute, their clerk, and Alexander Christie junior, writer in Dunse, concluding against them for delivery to me of the pocket of horse which were then locked up in the counting-house of Greenlaw, by warrant of the sheriff, until the issue of the cause betwixt Welford, Cochran and me, had been brought to a period ; which, at this time, was finally terminated by two decreet-arbitrals, registered in said sheriff's books ; which cause, depending before the Court of Session, came

con-

urse of the rolls, to be called before Lord
 times; and his Lordship, after hearing
 rties, ordained a condescendence to be
 en in, answers were made thereto, and a
 ort reply made to these answers; where-
 in order to shorten the cause, the whole
 icles of the condescendence were referred
 the respective oaths of the defenders.
 Upon advising all which, his Lordship was
 ased, upon the 30th June 1772, to pro-
 nounce the following interlocutor: " The
 Lord Ordinary having heard parties pro-
 curators, upon the import of the articles
 craved to be admitted to proof in the pur-
 suer's representation, finds, That as it is
 acknowledged, that the sheriff-substitute
 prohibited the jailor from delivering the
 pursuer the justiciary warrant, there is no
 occasion for allowing a proof of that arti-
 cle; finds, That as it is also acknowledged,
 that the sheriff did not intimate Cochran's
 petition to the pursuer, by reason of its
 not being customary to do so in inferior
 courts, there is no occasion for allowing a
 proof of this article: and, as the precogni-
 tion taken by the sheriff is in process, finds,
 That the allegation, as to this article, is
 without foundation: finds, That as it is
 likewise acknowledged, that the sheriff re-
 fused to accept of the caution offered by
 the pursuer, in respect of the badness of
 the cautioner; so there is no occasion for
 " a

“ a proof of this article: and in respect, it
 “ also acknowledged by Alexander Christie
 “ one of the defenders, that he transmitted
 “ a letter to Mr George Home writer to the
 “ signet, in order to be produced before the
 “ Court of Justiciary; therefore there is
 “ necessity for a proof of this article; and
 “ with regard to all the other articles of the
 “ representation, finds them not relevant
 “ and therefore cannot be admitted
 “ proof.”

This interlocutor appearing to me and
 my counsel to be erroneous, both in regard
 to the particular articles mentioned by
 Lordship, for refusing a proof by oath,
 which very inadequate reasons seem to be
 assigned,) and with regard to the many
 other articles which his Lordship had reject-
 ed by the lump as irrelevant, I presented
 a reclaiming petition to the whole Lordship
 which was ordained to be seen and answer-
 ed, and answers being given in thereon
 their Lordships pronounced the following
 interlocutor: “ *Edinburgh, August 1st 1777*
 “ The Lords ordain the pursuer to give
 “ memorial upon the whole cause, and
 “ point the memorial to be given in to the
 “ boxes upon the 26th of October next,
 “ to furnish the other parties with six copies
 “ of said memorial, and allow them, if they
 “ think fit, to give in a counter-memo-
 “ rial against the 12th of November next.”

Agreed

Agreeable to this interlocutor, a memorial was given in for me, drawn by James Boswell, Esquire; and sometime thereafter, a memorial was also given in for the sheriff, and the defenders; in which there was so much eloquy and reproach thrown out upon my character and circumstances, as obliged me to apply to the court for liberty to give in an additional memorial, in order to wipe off the aspersions wantonly cast upon me by the defenders; which desire was granted, and an additional memorial, drawn by Andrew Cross, Esquire, was given in for me; to which there was no answer given.

In the additional memorial, page 2. it is read for the author, "That the memorial for the defenders, under a shew of the greatest moderation, with respect to speaking out any thing detrimental to the credit or character of the pursuer, does, in fact, contain the most violent attack on both, which renders it necessary for the pursuer to begin, by making a very few observations in point of fact, respecting his situation, both in character and circumstances."

"It is true, the pursuer had the misfortune, in the more early part of his life, to be rejected, when applying to be admitted procurator before the sheriff-court of Berwickshire; and that the judgement of the sheriff, in that case, was approved of

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" by

“ by your Lordships; but it is equally true
 “ that even at that time, his character stood
 “ so fair with numbers in that part of the
 “ country, that he produced numberless
 “ attestations of it, under the hands of those
 “ who knew him; and let his character have
 “ been what it would at that time, he has
 “ since been held in so fair estimation by his
 “ neighbours, as to encourage him, not only
 “ ly to practise as a notary-public in the
 “ very county, but also to settle there in the
 “ way of a brewer and distiller, where
 “ carried on business a considerable time
 “ with reputation and success.”

In order to satisfy the court, how ill-founded the vague and random reflections cast upon the pursuer by the defenders were, there was produced, and given into court, along with said additional memorial, the following certificates in his favour, *viz.* a holographic certificate from the minister of the parish of Dunse, as follows: “ These are certifying
 “ that the bearer, Mr James Gilkie, written
 “ in Edinburgh, was born in Dunse, and has
 “ resided in that parish with his family for
 “ a considerable number of years by past
 “ behaving himself honestly, soberly, and discreetly,
 “ free of all public scandal, or any
 “ ground of church-censure known to me
 “ I have besides, been acquainted with him
 “ from

from the time of his being at school, and
can the more readily attest the above.

Robert Bowmaker minister.

Dunse Jan. 6. 1773. James French elder.

John Spence elder."

2d, " I Robert Henderson writer in Lau-
der, and commissary-clerk-depute of the
commissariat of Lauder, do certify, That
James Gilkie writer in Dunse, was admit-
ted a procurator before this court; and
since his admission as such, there was no
person or persons gave in any complaint
against him before said court; and I ne-
ver did hear any malversation committed
by him any manner of way in his office.
In witness whereof, written and subscri-
bed by me at Lauder, 9th January 1773.

Robert Henderson."

3d, Lauder, January 9. 1773. " These
certify, That the bearer Mr James Gilkie
writer in Edinburgh, was some years ago
admitted procurator before the magistrates
of this borough; that ever since, he has
behaved himself honestly and candidly;
and that we never heard any reflection a-
gainst his conduct, or any complaint from
any person whatever against him. More-
over, Mr Gilkie has been known to me
personally, and I never knew any thing
said to his charge.

A. Edmonston bailie."

4th, The following certificate is holograph of the fiscal of the sheriff-court of Berwickshire.

At Dunse the 5th and 6th days of January 1773. “ We subscribing merchants, tenants and inhabitants in and near town of Dunse, do hereby certify, That about the month of October 1770, James Gilkie brewer and distiller in Dunse, that period was carrying on his brewing and distillery in the same manner as formerly, and appearing to us to do well that we at the time never heard of bankruptcy, or intending to fly to the country, but his circumstances then were good as formerly; and that for ought we know, would have continued so, or rather to the advantage, had not a pocket of his been abstracted from his house, which deed gave an alarm, and certainly hurt his credit, he being at the time from home wounded his trade, and in a manner effectually put a stop to his business; as rumours and false clandestine dealing are injurious to mankind, we heartily sympathize with him, and heartily wish that he may be supported to get out, and quit such a labyrinth of oppression that surrounded him ever since; that his conduct has always been fair and honest to us and to others, so far as we know.

N. B. This certificate is subscribed by

ty-e

eight persons, among whom are the four
 beacons of the trades in Dunse. There was
 also produced the following certificate, viz.
 We Thomas Carse cooper in Dunse, and
 William Darling maltster there, do certify,
 That Mr Gilkie was carrying on his brew-
 ery and distillery in a prosperous way, un-
 til the pocket of hops were carried out of
 his house, when his trade failed. We
 wrought to him, and had access to know
 the same, I, the said William Darling ha-
 ving made, for the use of the brewery,
 twenty-one steeps of malt before that pe-
 riod.

Thomas Carse.

William Darling."

To all which certificates there is a N. B.
 added, offering two thousand more sub-
 scribers, if needful. Might not then Mr
 Crosbie warrantably affirm what he does in
 the eleventh page of the additional memo-
 rial, " That the pursuer humbly contends,
 that he has suffered the most manifest op-
 pression and injustice, in having this bond
 of cautionry refused, (this was the bond
 of cautionry that was given for payment
 of the hops), upon the weak and frivolous
 pretext that was set up against it; and,
 on the whole circumstances of the case,
 he apprehends that it will appear he has
 been harassed and oppressed in a most
 " extraordinary

“ extraordinary manner, by a combinatio
 “ or conspiracy against him, in which som
 “ gentlemen, from whom he would hav
 “ expected a very different conduct, hav
 “ taken a very active part. He cannot co
 “ clude without making one observatio
 “ upon the supercilious and abusive sti
 “ that is adopted in the defenders memoria
 “ which, he apprehends, comes with a ver
 “ bad grace from the mouth of the gentl
 “ men whose names appear at the head
 “ it.” And Mr Boswell, concluding h
 memorial, says, “ By the important a
 “ for abolishing heritable jurisdictions i
 “ Scotland, the inhabitants of this part
 “ the united kingdom are happily deliver
 “ from one great source of oppression, con
 “ mitted by the inferior officers of the law
 “ and it would be hard indeed if oppressio
 “ of the same kind should be permitted
 “ come in its place.

“ The objects of such oppression are, gen
 “ rally speaking, persons whose situation
 “ life makes it be supposed that they a
 “ unable to sue for redress of the wrong
 “ they have suffered; and therefore the hop
 “ of impunity too often occasion liberties
 “ be taken with them, which those who a
 “ guilty of such liberties would not da
 “ to take with persons placed in more fo
 “ tunate circumstances.

“ To say there was no bad intention, an
 “ on

only an error in judgement, will not be sustained as an excuse for such oppression; for, *ignorantia juris neminem excusat*, is a maxim which applies to every party, it must apply with much greater force to those whose offices more especially oblige them to understand the law: and courts of justice must presume depravity of intention from outward acts. A defence upon this ground did not avert the just vengeance of this supreme court in the late cause M'Kay against Sutherland; nor did it avail in 1766, in the cause Edwards woolcomber in Aberdeen against Farquhar, one of the baillies, and Smith the procurator-fiscal there, though Farquhar had to plead he had no salary for executing his office. Besides, in this case, your Lordships will judge whether such a train of proceedings, distressing to the memorialist, was unintentional, and ought not rather to be imputed to that unhappy prejudice entertained against him; the attention which your Lordships ought uniformly to give, in order to redress every wrong of this kind, as it must effectually civilize the country, by establishing such habits of restraint as are absolutely necessary for preserving the good order and comfort of society; so it gives the memorialist great reason to hope that he will obtain that reparation to

“ which

“which he, with humble confidence, think
 “himself intitled.”

Well might it be said of these counsellors, what Solomon says in his Proverbs
 “They opened the mouth for the dumb
 “they pled the right of those who were a
 “pointed to destruction, they judged right
 “eously, and pled the cause of the poor
 “and needy;” whereas Mr Robert Blair
 counsellor for the defenders, was so ungenerous as to support them by obloquy and reproach, and the odious imputation of bankruptcy, against the pursuer; but had he been disposed to retaliate, he could have put the gentleman in remembrance of the late bankruptcy of his own brother, known by the firm of Blair and Forrest bankers in Edinburgh.

Though the author's counsel, and the general opinion within and without doors, was in the pursuer's favour, and that he would prevail in his action, yet, upon advising the whole cause, the Lords were pleased to find the action he had brought highly injurious and oppressive, assailed the defenders, and delayed the consideration of the article of expence till that day se'en-night; and they had appointed Alexander Christie sheriff in the county of Berwickshire then to attend them, they also appointed the pursuer to attend at their bar at same time.

The pursuer at this time was in great

ess, being long afflicted with a dangerous
 fever, and then beginning only to venture
 broad; obliged, however, to comply with the
 order of the Court, though he could not so
 much as guess at the reasons the Court could
 have, for bringing, either the fiscal or him
 to the bar, (unless it was a suspicion that
 the certificate, wrote by the fiscal, had not
 been wrote by him), he gave in the follow-
 ing petition, shewing, " That the procura-
 tor-fiscal of the sheriff-court of Berwick-
 shire, and the petitioner, are ordered to
 attend your Lordships bar to-morrow, re-
 specting certificates that were produced
 for the petitioner, in the question betwixt
 him and the sheriff of said shire, &c.:
 These certificates were brought with no
 bad intention; but were produced in court
 merely to wipe off the repeated opprobri-
 ous attacks thrown out with impunity by
 those defenders against the petitioner, in
 the course of this process; and on pur-
 pose to convince your Lordships, that the
 petitioner's character and credit were both
 fair in the estimation of the whole county,
 (Sir John Stewart, and the other defend-
 ers, excepted), at the time he commis-
 sioned the hops from Atkinson and Hall,
 which gave rise to this dispute.

" The petitioner is heartily sorry that this
 step towards his vindication, intended
 purely to give your Lordships a just view

“ of that matter, should give the least im-
 “ brage, especially as the petitioner was pro-
 “ voked thereto, by the repeated scandalous
 “ and illicite attacks of the defenders. The
 “ respect due to the honourable Court, the
 “ most sincerely hopes is by no means in-
 “ fringed upon, by offering these certifi-
 “ cates under the hands of people of verac-
 “ ty, who were induced thereto from the
 “ earnest intreaties of the petitioner, and
 “ consciously attested facts, and nothing
 “ but facts.

“ If, after all, the petitioner has done
 “ wrong in this exhibition, he is sorry for
 “ it; but, if an offence unpardonable against
 “ himself, he humbly intreats, that Mr Christ-
 “ tie may not suffer on his account; but
 “ rather, that the petitioner may be loaded
 “ with the punishment due to both, which
 “ he is willing to undergo, even to the loss
 “ of life, the only thing now left him, and
 “ even that rendered miserable, by viewing
 “ his helpless wife and family share (though
 “ innocent), the unhappy fate of their ruined
 “ husband and father.

“ May it therefore please your Lordship
 “ if any person is to suffer on account
 “ of the above production, to inflict
 “ the whole upon the petitioner; and
 “ in the mean time, he continues
 “ pray to the Lord of heaven and earth

“ to support him under such dreadful
“ calamity.”

At moving this petition, there was also presented one from the fiscal, acknowledging, that he had wrote the certificate, and agreed with me respecting my reasons for retaining it. Upon reading the fiscal's petition, (drawn by Mr George Home writer the signet, and agent for Sir John Stewart, &c. defenders), I was interrogate by the Court, what I had to say to it: to which was answered, That the petition contained nothing but truth; and the reason why Christie was employed in writing the certificate was, that he was my procurator the inferior court. Whereupon the court was pleased to say, they were glad the matter had turned out otherwise than they expected, and dismissed the fiscal from the bar, which made the old man, at going from the court, to exclaim, that he did not grudge the trouble of a journey to Edinburgh, if he got the satisfaction of being able to tell on his return to the country, what reason their Lordships had to oblige him to undergo so long a journey in the winter-season.

It was then moved by the Lord President, how I was to be disposed upon; and though the question was three times repeated, none of their Lordships spoke on the matter, ex-

cept Lord Justice-Clerk, who appeared
 be in my favour; whereupon the Preside
 addressing himself to me, was pleased
 give me some instructions, and ended
 discourse, by desiring me to go away, and
 hoped what he had said would amend me.

Conscious I did not merit the epithets
 oppressor, &c. which his Lordship was ple
 sed to pronounce, I own I reaped no ben
 fit from his instructions on that occasion: fo
 when I reflected upon the loss of the cau
 (which my counsel had always consider
 that I was well intitled to prevail in,) a
 the distress to which my family was no
 reduced, I could not help considering m
 self as totally ruined; and, on this head, m
 honestly confess, that the Lord President
 suspicions were too well founded, when
 was pleased to say, "He was afraid
 "mind was not brought to that contriti
 "I had expressed in my petition;" whi
 was true in so far, as I could not be broug
 to repent of a crime, which I could not co
 sider as a crime: I was indeed sorry for
 distress under which I had brought my
 mily and myself; but had the Court ordai
 ed me to suffer the most severe punishme
 my conscience would not have allowed
 to confess, I had either injured or oppress
 Sir John Stewart, &c. or had an oppon
 nity for so doing; though, from sad ex
 rience, I ever will confess, I have suffe

much, both from him and those combining with him ; and have great reason to say with Solomon : “ There is a generation whose teeth are as swords, and their jaw-teeth as knives, to devour the poor from off the earth, and the needy from among men ;”

Prov. XXX. 14.

The article of expence came next under consideration, when I was so unfortunate as to be condemned in L. 28 to the defendants, whereof twelve guineas are said to have been paid Henry Dundas Esquire, his Majesty's Solicitor, who never wrote or spoke one word in the cause, except once at a leading before Lord Kaimes, (when Mr. Blair having repeated his former slander), Mr. Dundas was so honourable as to say, He was entirely ignorant of my circumstances or character, but whatever these might be, they had no connection with the cause, his Lordship was to consider the merits of the cause itself, that was the duty of his Lordship.” If Mr. Dundas, or speaking these few words, got such general payment, I have no objection to it ; but, though I am possessed of the agent's account, where this is charged, and am certain the same was decerned for, I doubt it much.

From what is above represented, which I take to be a fair and just state of the case, I can see no just reason for the Court to arraign me as a criminal at their bar, though
no

no accuser appeared, nor any complaint was lodged against me, nor could I find out wherein there might be ground of offence in procuring certificates of my character and circumstances at the time I commissioned said pocket of hops, as no way appeared more proper to remove the aspersions thrown out against me, than by obtaining these certificates.

My nearest neighbours had access to know me, and the injury done me; if then they certify the facts, and declare their sympathy, being convinced of the injury I had suffered, they surely could not be blamed for expressing the feelings they had for me, and I cannot help thinking they were equally well intitled to express their concern on that occasion, as many of the boroughs and inhabitants of Scotland, were to testify their joy upon hearing the determination of the House of Peers in favour of Mr Douglas.

The two following causes, determined by the Court of Session, appear to have a resemblance to my case. Not many years ago, a question about a rolling-stone was litigated before the sheriff of Linlithgow, and afterwards removed to the Court of Session by advocacy: the fact, it is believed, appeared to be, that a large rough stone had been taken by one person from the quarry of another, and shaped into a rolling-stone, and the question was, Whether the propri-

of the quarry had an action for the roll-
 g-stone, or only the value of the stone in
 original state, because of the specifica-
 on by which it had been fashioned from a
 rock into a roller; this was the subject of
 hearing and informations; and the Court
 creed, that the plaintiff should recover
 e shillings, and the defendant retain the
 one, Earl of Hopetoun *contra* Williamson.
 his cause did not go to appeal: But a que-
 on about a Highland ox, was not only ob-
 mately litigated before the Court of Sessi-
 but an appeal taken and prosecuted be-
 re the House of Lords; and the plaintiff
 ving only got three guineas as the value
 the ox, but no costs, suffered greatly by
 e victory, Macfarlane *contra* Napier 1746.
 owever, the determination of these causes
 as more favourable to these pursuers, be-
 use they recovered something; whereas
 not only recovered nothing, but was obli-
 d, at a considerable expence, to answer a
 ition given in by Cochran to the Court
 Justiciary, founded upon the false and
 dated letter before insert,

C H A P. III.

Containing the author's observations upon the preservation of property.

IN moveables, after the possession is taken away, the property is for ever gone, unless the robber or trespasser pleases, for he may put them away or destroy them; it is only in things called fungible, such as money, that restitution can certainly be got, and, as to reparation by damages and costs, the author finds, by experience, they cannot be obtained, and a *pretium affectionis* seems never to be allowed: and all lawyers have agreed, that as to costs, they are so taxed in all courts of justice, that the party prevailing, never gets all he has disbursed in personal expences, and other articles: And hence, an English satirist introduces a man saying, he had been ruined by a decree, which he had obtained in chancery, with costs; from all which it is evident, that the law does not give restitution; so that when a moveable is ravished from a man, all that remains with him is a claim at law for a thing of a different nature, *viz.* a compensation in a sum of money, which, for the most part, is inadequate; and in my case, I am condemned in a sum nearly equal to four times the price of the pocket of hops, for claiming

my property, besides ten times their value, in endeavouring to recover them. In Turkey I could have recovered my property, or the value of it, in a few hours, and at the expence of a few shillings. Is it not strange, that in a Mahometan country, a man can obtain more justice, and at less expence, than in this free enlightened Christian country?

When a man therefore uses no unlawful means to recover his property, unlawfully taken from him, he can never be blameable when only acting conform to law. A man may owe many duties to his neighbour; but, it is equally certain, he also owes many duties to himself; and these last are prior and paramount to the former; for which reason, it is obvious, that a man, not only may, but that he ought to preserve his property, when attacked; and it is not only lawful for him to do so, but he is highly blameable, if he does not: His blame is carried too far by some casuists, who maintain, that if any man ask your coat, you should give him your cloak also. Notwithstanding, no man will doubt, but it is the duty of a man to defend his life, nor will they doubt, it is also his duty to defend his property, without which he could not enjoy his life with comfort and pleasure. The end for which society was originally instituted, and the reason for which men continue in it, is the preservation

preservation of their being and well being, that is the preservation of life, reputation and property.

Any person who will reflect upon what gave rise to the formation of society among men, must be satisfied, that it was the oppression which the weak met with from the strong, when the persons or possessions of the weak were attacked by the strong, the natural impulse of self-preservation and self-defence made them exert themselves; but, by the superiority of force, their resistance was overpowered: This led them to unite, in order, that their joint force might accomplish what individual resistance could not do, from which it is evident, that it could never be the end or intention of any set of men in entering into society, to suppress or supersede the natural exertion of private resistance or defence; but, on the contrary, it is most palpable, that the end of their entering into society, was to obtain, from that principle, a subsidiary and suppletory assistance. And who will doubt of the law of nature being the law of every country, excepting in so far as it is modelled and restricted by municipal statutes. Our statute in 1661, is so far from abrogating the natural right of defence, that, on the contrary, it tolerates and protects it in the greatest latitude; and, for that purpose, uses the very general expression of lawful defence; it does

not use the expression in self-defence, for
 that might be thought only to extend to the
 defence of the person or life, but it uses the
 comprehensive expression of lawful defence;
 which extends not only to the defence of the
 person and life, but to the defence of repu-
 tion and goods. And Lord Chief Justice
 Hale affirms: His words are, "If a man
 comes to take my goods as a trespasser, I
 may justify the beating of him in defence
 of my goods, but if I kill him it is man-
 slaughter." And Foster says, "The injured
 party may repel force, with force, in de-
 fence of his person, habitation or proper-
 ty, against one who intendeth or endea-
 voureth, with violence or surprise, to com-
 mit a known felony upon either." Black-
 stone's doctrine is the same with his, and not
 different from his, but every lawyer who ever treated
 of the subject. If then all agree, that it was
 lawful to repel force by force, in defence of
 the property, would they not all equally agree,
 that it was lawful for any man to attempt
 the recovery of his property in a lawful way,
 if unlawfully taken from him.
 I presume, it readily will be admitted, that
 a law ever well founded in justice and equi-
 ty, the laws of any country are; yet, if these
 laws are not executed, and applied agreea-
 ble to the intention of the legislators, but
 are kept away at pleasure, in that case, the
 right of the subject would be trampled
 upon,

upon, and they would reap little benefit or advantage from the laws of their country; but, on the contrary, their property would be inroached upon, and reduced to the most precarious condition.

A great man has made this observation upon our laws, that, tho' they are the best calculated for government of any in the world, they certainly were not designed for the poor, who are only intangled in them; like a spider's web, they imprisoned the lesser insects, whilst the greater broke through them: That the rich could support the expence and delays of suits, though in the wrong, whilst the poor could hardly stand the expence of one court, tho' in the right; or if they did, and its judgement was in their favour, could not follow it to another upon their adversaries appeal; and therefore, it is much to be wished, that some public-spirited person would make a motion in parliament, and procure an act to lessen the expence and protraction of suits; for till this was effected, it was impossible a poor man could be benefited, however injured, by the laws of his country.

I could sincerely wish to see the subjects of North Britain enjoy the same advantage and privilege in the protection of their goods, they are so happy to possess in the protection of their lives; that is, I wish to have questions, concerning property, determined

etermined by juries, as in England. Among the advantages arising from such an alteration, I shall only observe, that in this case, the most potent adversary would be upon an equal footing with the poorest subject, and would not have it in his power to retract the cause, by a multitude of counsellors, and the power of money, which is too often the case at present: he would also have the satisfaction of seeing a question in relation to property finally determined in a day or two; and that, perhaps, by a jury of his own neighbours, who might have access to know all circumstances in relation to it, in place of being drawn into a litigation for two or three years, and put to the dreadful expence of petitions, minutes, informations, answers, replies, and duplies innumerable.

By such an alteration in the way of procedure, many poor hungry, anxious and distressed persons, would be relieved from attendance upon all the various steps of their cause, when anxiety and concern sit visible on their countenance, and express their uneasiness of mind better than words can paint. However, it is the legislature alone that can rectify this.

In England, they have long wished, (tho' in vain) to see a compleat body of English laws reduced into language and compass, within the comprehension of every English reader,

reader; this would be considered there as very valuable treasure; and have not we North Britain also great cause to wish to the world favoured with a compleat body of our laws; (more especially of those respecting the preservation of property, and the invaders of it) wrote with such clearness, style and method, that persons of an ordinary capacity, (though unacquainted with the terms of law,) might be able to understand it? If such a work were properly executed and receive the sanction of the Court of Session, no person can doubt, but the public might acquire great light and advantage thereby; for, although many have given their opinions upon what ought to be law, yet, it is certain, that what the judges determine is law to us, as they consider themselves the interpreters of the law.

The noble and judicious author of the account of Denmark, speaking of the Danish laws, gives this character of them, “ That for justice, brevity and perspicuity, they exceed all that I know in the world; they are grounded upon equity, and are contained in one quarto volume, written in the language of the country, with much plainness, that no man, who can write and read, is so ignorant, but he may perfectly understand his own case, and plead it too if he pleases, without the assistance of counsel or attorney.”

“ He

Here is none of that chicane to be found which destroys and raises so many great estates in England; a very few advocates to the business of all the litigious persons in these kingdoms; neither are their fees arbitrary or exorbitant; no suit of what importance soever hangs in suspense longer than one year and a month; since a man may go through all the courts, and have execution done within that time, unless he be wanting to himself."

In Denmark, in the ordinary proceedings between man and man, there are three courts, every one of which has power to give a definitive sentence, and must either acquit or condemn; yet there lies an appeal from the lower to the higher, and if the inferior judge has wilfully varied from the positive law, the party wronged has damages given him, both from the judge and his adversary."

Having given an account of these three courts, the author adds, "The judges in the two former (or inferior courts) are constituted indeed by the king's letters patent, *ante bene placito*; but are punishable for any misdemeanors committed, and condemned to make reparation to the party injured for any injustice by them done."

In matters relating to the revenue, the exchequer-chamber in Denmark, resembles our court of exchequer, which also has a paymaster

“ master-general belonging to it ; and for
 “ times there is a court composed of for
 “ members of this rent-chamber, the adm
 “ ralty and the college of commerce ; befo
 “ which lies the appeals of merchants, who
 “ goods happen to be seized for not havin
 “ paid the king’s duties.”

“ The sentences passed in the inferi
 “ courts are sometimes biassed and part
 “ but not often, for fear of the highest cou
 “ where great regard is had to justice ; in
 “ much, that I knew a judge, who ve
 “ hardly escaped being fined for a senten
 “ passed against an English merchant, wh
 “ sentence was presently reversed.”

At the two inferior courts, “ the ju
 “ inserts the law, and adds the reasons
 “ on which his judgement is founded ;
 “ in the highest court no reason is given
 “ all, or but very seldom ; and that no cl
 “ may have it in his power to pick any ma
 “ pocket, by filling up many sheets of
 “ per, there are limits set, beyond which
 “ man is obliged to pay. Every one n
 “ plead his own cause that pleases ; ho
 “ ver, it is the king’s order, that the ma
 “ strates take care to have one or more
 “ vocates, (such as they approve of),
 “ are to plead for the poor, and for such
 “ cannot plead for themselves : Upon
 “ whole matter, the charges of the
 “ are very easy, since a complaint

go to all these three courts for less than L. 12 Sterling, unless the sum in question be very great, and more than ordinary evidences, to be written on sealed paper. These laws are so equitable and expeditious, that they are extremely commended by merchants and strangers, who have occasion to have recourse to them. Neither is the smallness of the expence any encouragement to those that love going to law: for the laws themselves provide effectually against this mischief, and take away the very root of litigiousness; being so plain and clear, that a troublesome person never finds his account in promoting vexatious suits; but meets with all the disappointments one would wish him."

"It may be replied to this, That the scarcity of money may be the principal occasion of few law-suits, and lawyers. It is not denied, and perhaps a right sense of this was the first cause of so good a regulation of justice: for, since the king was resolved to empty the pockets of his subjects, it was not for his advantage to permit others to do it, and share the gains with him. However, this much with certainty may be averred, that the like regulation would not only agree with, but consummate the happiness of a rich country; and this instance of Denmark makes it evident, that such a regulation is practicable."

C H A P. IV.

*Of advantages of determining causes by submission
and decreet-arbitral.*

OF all the privileges we enjoy, we have not a greater one than allowing us this privilege to have our debates, differences and questions, determined by submission. By this we can have our door-neighbours be our judges. This manner of determining, valuable as it is, is too much despised amongst us, though it may be well termed a court of conscience: For, in the beginning of the decreet-arbitral, the law prescribes before they enter upon the determination and deliver their opinion, they shall declare their having God and a good conscience before their eyes, in imitation of an instrument of seisin, which begins with, *In the name of God, Amen.* The reason assigned therefor is, that the name of God shall not be taken or prefixed to a lie; and indeed what could any man demand more from a judge, who is to determine his differences than such a declaration. He certainly may expect the judge, who declares so, will give him all manner of justice in his power; besides, this is a most easy and ready method of obtaining redress. If witnesses are necessary to be cited, the law has pre-

scribed

cribed a very proper remedy: upon production of the submission, and proceeds to the clerk of the bills, diligence will be granted to cite them to appear before these arbiters, and this diligence extends to every individual within Scotland; and if they refuse to compear, when cited, upon a second application, second diligence will be granted, which contains a warrant to carry them by force, and at their own expence, before the arbiters. If also, arbiters once accept, they can be forced to give judgement by letters of horning, upon which caption will follow against them. When their judgements are pronounced, and reduced into writing upon the back of the submission, as is usual, being put in the register, it will receive the sanction of the judge, and letters of horning and caption will follow thereupon, in the same manner as it were a decreet of the Lords of Council and Session; and though that of their Lordships is liable to an appeal, a decreet-arbitral is not; for it cannot be set aside but upon the head of bribery or corruption. Who would then chuse to go abroad for justice, when he could have it at home, and at an easy expence.

As every person is inclined to be partial in forming a judgement upon his own case, it will be objected by many, Why should I submit or refer my cause to the determination of any private persons, considering the law

law is plain in my favour ; and hence, many very imprudently involve themselves in law suits ; but, after having experienced the trouble, uneasiness of mind, and great expence necessarily attending such disputes, the same persons have had just cause to repent when too late, their neglect of the advice here offered. The rich and the great may do what they please in that respect, but cannot help recommending to the poor inhabitants of Scotland, never (if possible) to be concerned in a law process ; least, some time or other, they have the misfortune to bring upon themselves my fate, by despising the instruction here published for their good and upon this occasion, I sincerely give it as my opinion, that any man who will not acquiesce in this easy way of obtaining justice appears to me to have a base depraved mind and to be actuated by motives he dare not publicly own. Let us then make a proper use of such blessings as the laws have afforded us, until we may be so happy as to obtain greater.

C H A P. V.

Observations upon corruption and bribery, &c.

OF all vices, both public and private, the most pernicious, as well as the most dangerous, is corruption, or being influenced by pecuniary or other motives, to act against judgements and consciences. I call this the most pernicious of all vices, because it is really an inlet to every other, both with regard to the corrupter and corrupted.

A man in private life, who corrupts another, or suffers himself to be corrupted, is a very dangerous criminal; because self-defence will prompt him to stick at nothing afterwards, for fear of discovery, and make an endeavour to screen one piece of iniquity by another.

A person when in public life, who gives himself up to this scandalous practise, is still more dangerous; but a man who is intrusted with the riches of a whole nation, hath it in his power, not only to bribe multitudes to his measures, but even to stop the hue and cry, when it begins to pursue him. By these means, the corrupt party will soon grow too strong for the uncorrupt, and defeat all their impotent attacks. When this comes to be the case, what can be the consequence, but that virtue and common honesty

nesty will be laughed out of countenance. The generality of mankind will grow ashamed of these old-fashioned virtues, and chuse to be rich and wicked with the majority, rather than poor and virtuous with the minority.

There are two vices, directly opposite in one respect, which concur in bringing about such a national corruption, I mean avarice and extravagance, both equally insatiable, since the lust of hoarding up money makes the one as necessitous in imagination, as the other of throwing it away renders the other. The two sets of people will be continual drains upon a minister, who is known to support himself in power by this infamous expedient. But, as his chief reliance must be on the vulgar, the profuse being vastly more numerous than the avaricious, he will not trust to the natural propensity of mankind, but encourage them in it, by introducing a general vogue of luxury, and endeavouring to turn all examples of frugality into ridicule. This will not only make them extravagant and necessitous, but effeminate, and indifferent to the public good at the same time.

If *electors* professedly receive *bribes*, *candidates* professedly give them, personal merit being thrown out of the scale, and the qualifications of the *candidate* being put on the same scale with his money, the *giver* and *receiver* are both enemies and traitors to the commonwealth.

commonwealth, underminers of the most sacred privilege in our constitution, the *freedom of election*; they throw down the only bulwark which can preserve liberty from encroachment.

This is the most sordid, and the most villainous way of trading in the world. For 'tis plain, he that *buys in the piece, must make himself whole again by selling out in parcels*. Besides, this way of procuring public trusts corrupts a people, and renders them mercenary and venal, and fit to be sold; and a dishonest, corrupt people, neither deserves to be free, nor can they long preserve themselves from being bound with the fetters of their vile prostitution of honour and conscience to sordid gain demerits. To a free people, who have the right of making their laws, and laying on their own taxes by their representatives, it may be justly said, as it was to the people of Israel of old, *that their evil is of themselves; whatever they suffer, they have themselves to blame for it*; and consequently, the guilt of it lies upon themselves. A horrid unexpiable guilt, of which the greatest misery that a nation can fall into, is but a just punishment, for which no commiseration is due to them, who brought it upon themselves, but to their unhappy posterity, who must curse them, if they are not quite insensible of the value of the liberty and happiness their ancestors basely gave up, and the

the deplorable condition they are depressed into, by the corruption and venality of those who gave them birth, *i. e.* till slavery, long continued slavery never fails to do, and trudes them into a state not far removed above that of the brutes.

Tacitus observes, that the luxury of *A* was more destructive to Rome than all its enemies, and certainly it proved so; for it was that which made them susceptible of every vice which was practised in the nation they conquered, enervated their courage and turned a nation of heroes into a nest of slothful effeminate cowards.

Machiavel says, that luxury is not only the sign of a state sick, but of a state expiring; and, he is of opinion with *Tacitus*, that it was the ruin of the *Roman* empire.

Mezeray, who wrote the history of France in the life of Henry III. has these words:—
 “ The most universal cause of all disorders
 “ was luxury; the high taxes in this reign
 “ had engendered this proud and delicate
 “ monster; the many people in civil offices
 “ all those through whose hands the public
 “ money passed, wallowed in wealth; the
 “ largest sum sometimes cost them no more
 “ than the dash of a pen, it was but falsifying
 “ an account, and they filled their pockets
 “ kets; and as it came in easily, it made
 “ them launch into all kinds of superfluities
 “ ties; but the worst of it was, the bad example

“ amply

ample infected others, for a great number of private gentlemen, either through their own folly, or pushed into it by the vanity of their wives or children, were proud of equalling these pick-pockets, in their vain and idle expences; so, that like Æsop's frog, they burst with swelling."

When we consider the destruction which luxury has caused in all those nations, where it has been introduced, we should tremble to think, to what a height it is risen in this nation; we are sensible that our commerce has been upon the decline, our manufactures going to decay, and great numbers of the industrious part of the people wanting employment. This is a truth we have seen and felt, yet this proud and delicate monster talks about, and spreads its conquests, in proportion as the public poverty increases.

It is observable of the Roman people, that corruption shewed itself first in the management of affairs within; it increased more and more, and integrity in a public office grew rare; justice was every day less regarded, and the desire of wealth was the governing passion; the most considerable persons in the commonwealth employed all their study and industry, meanly to grasp at what was none of their own. In fine, the leading men were for the most part weary of loving the commonwealth, and of the esteem and reverence before paid to men of virtue; the poor

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appeared

appeared ridiculous now to those who love nothing but themselves, and esteemed nothing but wealth; honour was considered a mere chimera, and the love of glory, an idle piece of vanity; every man became solidly self-interested, and that principle was set up as a mark of solid good sense.

When Jugurtha first took it into his head to destroy both his kinsmen, and to take the whole kingdom of Numidia to himself, nothing stuck with him but the fear of the Roman senate; but, consulting a crafty wicked fellow, who was one of his confidentes, this fear was soon removed, for this man told him, that he would become master of a vast treasure; and he need not fear the Roman senate, for every thing was venal at Rome; it happened just as his friend had told him, he got off both of the murder and robbery, by bribing the senate; and as he left the city, he said to his companions, that *the senate would have sold Rome itself, if a purchase had offered*; and I believe he was right, for effeminacy and luxury had fitted them for any base actions; it was looked upon that to take bribes, and protect and screen villainy was the business of a Roman senator. When then is the wonder, that they should sink into such contempt, that the people looked upon them as little better than a gang of thieves?

The pure and impartial administration of justice

ice, is perhaps the firmest bond to secure cheerful submission of the people, and to engage their affections to government. A free and generous people, are roused by every appearance of oppressive and unconstitutional measures, whether those measures be supported openly by the power of great men, or masked under the forms of a court of justice.

Prudence and self-preservation will oblige the most moderate dispositions, to make a common cause, even with a man whose conduct they censure, when they see him persecuted in a way which the real spirit of the laws will not justify. And it will be admitted, that the greatest criminal will, from a good man, receive sympathy, though nearly so miserable; whereas, an ill-hearted man is entirely devoid of feeling to his fellow creatures; and invective in him, is a weapon worn as commonly as a sword, and that, is often in the hands of those who know not how to use it. Men of true courage fight but seldom, and never draw but for their own defence; bullies are continual squabbling, and from the ferocity of their behaviour, become the terror of some companies, and the jest of more. This is just the case with such as have a liveliness of thought, directed by a propensity to ill nature; indulging themselves at the expence of others, they by degrees incur the dislike of all. Meek

temper abhor men of cool dispositions
 spite, and those addicted to choler, chastise
 them: thus a licentiousness of tongue, like
 spirit of rapine, sets one man against all, and
 the defence of reputation, as well as property,
 puts the human species on regarding
 malevolent babblers with a worse eye than
 a common thief; because fame is a kind of
 goods, which, when once taken away, can
 hardly be restored. Such is the effigy of the
 human serpent, and who, when he has con-
 sidered it, would be thought to have sat on
 the piece. Mr Dryden, in his dedication of
 one of the best natured men of his time, says
 “ Good nature is a quality which deserves
 “ the highest esteem; though, from an un-
 “ countable depravity both of taste and na-
 “ ture, it meets with the least;” for, could
 there be any thing more amiable in human
 nature, than to think, to speak, and to do
 whatever good lies in our power unto others.
 No man who looks upon the sun, and who
 feels that cheerfulness which his beams in-
 spire, but would rather wish himself like
 glorious a being, than to resemble the tiger,
 however formidable for its fierceness, or the
 serpent hated for his hissing, and dreaded
 for his sting. Good nature may indeed be
 made almost as diffusive as daylight; but
 short are the ravages of the tiger, innocent
 the bite of a serpent, to the vengeance of a
 cankered heart, or the malice of an en-
 vious

omed tongue. To this let me add one other argument in favour of this benevolence of soul, good nature adorns every perfection man is master of, and throws a veil over every blemish which would otherwise appear; in a word, like a skilful painter, it places its virtues in the fairest light, and casts its foibles into shade.

The Scriptures have painted in the strongest colours, how greatly sensible the Judge of all judges is to the oppression of the poor and the weak, as well as to the injustice of the judges and the mighty of the earth. The Prophet Isaiah represents truth feeble and trembling, imploring, but in vain, the assistance of the judges, and representing herself to no purpose before every tribunal. Success is denied her every where; she is in all places rejected, forgot, and trodden under foot; interest prevails over right, and the good man is delivered up a prey to the unjust; for *ye have eaten up the vineyard, the oil of the poor is in their houses, what mean ye that ye beat my people to pieces, and grind the face of the poor? Ye ought to defend my people as a vine that was committed to your care, ye who ought to serve as a hedge and rampart to it, it is you yourselves have made wild havock of this vine. He that has ears to hear, let him hear. You bruise them, you crush them under the mill, in order to grind them to dust, you perhaps intend to conceal your gifts and rapine from me. Every thing calls a-*
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loud for vengeance, and shall obtain it, and your children, and the son of an unjust father, as he inherits his crime, will also inherit my anger. There is a glaring instance of Joel and Abiah sons of Samuel, taking bribes, turning aside after lucre, perverting judgement, and arraigned by all the people; their generous father lamenting their venality, punishing them by removing them from their office of chief judges, 1 Sam. viii. Although nothing can implead injustice, equal to what is set forth, I shall only add, that injustice is one of the worst of vices, because it wrongs the best of men, and the best of things; the best of men, seeing they have still the best of pleas; and so injustice can only reach them; and these will not, by flattery, bribing, or cheats, conciliate the esteem of such as have a latitude to return them this unjust advantage, which good men neither need, nor will accept. Injustice likewise debauches the law, which is the best of things; and, in affronting whereof, of all others great men are (when guilty) most ungrate, because it is their guard and fence, by which they exact respect and treasures from others, and without which such magistrates, who are unjust, though only wearers of the people's livery, cannot escape these hourly massacres which robbed and oppressed people will pour upon them; and, though such as are generous

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ally just, intend thereby to compliment
 their friends to repay old favours, yet, in
 effect, this requital is as base, as if one should
 go to a church to pay his particular debts.
 He is not worthy of your friendship who
 will expect such returns : and virtue is not
 a vice, so penurious or poor, as that it
 cannot build upon any other foundation
 but the ruins of another. Such as intend,
 by their injustice, to gain esteem from the
 many, are greatly advantaged thereby, are much mis-
 taken ; for, though they should gain the e-
 steem of one, yet they would lose that of
 many thousands ; and he who is wronged
 will disclose the injustice done him, more
 than the other dare brag of the favour : and
 as a just maxim, the gainer hates and un-
 values his unjust patron, loving not the
 benefactor but the treason ; considering, that by
 the precedent himself was laid open to
 the hazard than he thereby reaped of ad-
 vantage ; for that same injustice, which in-
 debted him of his late conquest, made him un-
 worthy both of it, or all that he had, or should
 have thereafter. And to be unjust for a
 service, is as mean as to serve in the worst
 employments for a fee ; it is to be as base as
 a thief, and less noble than a robber, and it
 deserves all these reproaches that are due to
 a knave, lying, flattery, ingratitude, trea-
 son, and perjury, and leads to the ignoble
 ports,

ports, infamy, poverty, the scaffold, pillory or gibbets.

What avails it to a country, to hear a magistrate make protestations to serve a country, when his inclinations and actions are quite reverse. Moses the first, and among the best of the reformers, was the meekest man upon the face of the earth; but Jehu who was but a counterfeit zealot, drove furiously, and called up bystanders to see what else he knew they had reason not to believe, and the justest of all Israel's chairmen took not so much pains to execute justice, as Ahasuerus, who is said to have staid as long in the gates of Jerusalem, as the sun staid above them, informing himself of all persons and affairs; though with as little design to redress their wrongs, as he shewed much inclination to know them; and all this, that the people might be gained to be the instruments of his unnatural rebellion. I intend to have treated further upon unjust judgments and shown to whatever height of fortune men are raised, still they ought to consider themselves but as men, and no difference of rank whatever ought to sway their judgements when sworn to do justice, and that ambition is but a mean vice; but this short treatise will not permit me to dwell long thereupon, I shall therefore conclude this head with the saying of a courtier, who, when admiring the philosopher gathering his herbs, told him

he flattered the emperor, he needed not
 other herbs; but was answered, that if he
 could satisfy himself with herbs, he needed
 not flatter the emperor; and without doubt,
 flattery infers more dependence than gather-
 ing of herbs; and, in the dispute for liberty,
 Diogenes had the advantage of the Staga-
 site, when he told him, Diogenes did dine
 when it pleased Diogenes, but Aristotle, not
 when it pleased Alexander.

N CHAP.

C H A P. VI.

Generous and beneficent actions recommended.

THOSE surely will be accounted the greatest souls, whose chief aim is to promote the good of the public, scorning to wind up their designs upon so small a bottom as private interest. By this many among the heathens were deified, and which more, Christians do by it resemble them. And who can so justly expect universal praise, as those who design universal advantage? None will grudge that riches should be carried into his treasures, who keeps them but as Joseph did his corn, in granaries, till others need to have their necessities supplied. Whoever pleads the cause of the poor, ignorant and helpless, shall inherit the blessing promised in psalm lxi.

Those who assist the poor and helpless are deservedly stiled *patres patriæ*; and it is accounted moral parricide to wound the reputation of such as the commonwealth term its parents; and a dear parent he is, who defends the poor and helpless. It is the mark of a noble benevolent soul, to hear the cry of the needy and oppressed; and when they are fallen into a ditch, to lend them a lift; and a deep ditch it surely is, to be plunged into a litigious and expensive plea at law, gain

most powerful opponents. Such as have laboured and exerted themselves only to promote the good of their country, and the happiness of mankind, shall find their fame like medals, grow still more illustrious by all actions of time; and new-born generations will augment the number of their admirers, more than following years can moulder away these heaps of coin which avaricious men raised as a monument to their memory. Scipio is more famous and admired than Cræsus. That glorious Roman, who threw himself into the devouring gulph, to save the wrath of the gods from his country, in exchange for a few years, (which he might have lived), add an eternity of fame to his age.

But if men will love nothing but what will advance their own private interest, they will, at least, upon this motive, love their country; because, when it becomes famous, they will have a share in that advantage; as Scipio a Roman, was alone sufficient to make a Roman to be considered as terrible, when Rome flourished: and I am apt to think, that Scipio was sufficient to incite a citizen of that glorious republic to undertake or suffer the meanest things, to remember him that he was a Roman.

At all times the unacquainted still esteem Scipio according to the presumptions they can gather from our country, race, and education.

on. For, as a hawk of a good nest is preferred, we daily see, that example and emulation, are the strongest motives that induce men to be noble and valourous ; and though some may call this a fancy, granting it was so, it is such a fancy as tends much to our country's honour ; because it heightens in them a fear of us, and lessens in us the fear of them : That, as the rays of the sun are accounted a more noble light than any that is projected from a private candle ; and as, amongst perfumes, those are accounted noblest, whose emanations reach to the greatest distance ; so, amongst generous souls, those are considered as the most excellent, who consider most the case of the poor and needy ; and, upon this occasion, the author cannot omit to testify the most grateful sense he always shall retain of the benevolence and generosity of the counsel in this cause, who hitherto have wrought for nothing. No cause was ever more distinctly and accurately pled, as the memorials given in to court will plainly indicate ; and it is much to be wished, that every lawyer would follow so laudable an example.

C H A P. VII.

containing an answer from his Majesty's principal secretary of state to the author's petition to his Majesty, his petition to the court of session, with their interlocutor thereon, his petition to parliament, and the answer of their clerk thereto, with directions anent the method of proceeding in forma pauperis before the house of peers.

St James's, May 14. 1773.

S I R,

I AM directed by Lord Suffolk, to return you the inclosed papers, and to acquaint you that the subject-matter of your petition to the King, being the judicial proceedings in a question of civil right between subject and subject, it is improper to lay the petition before his majesty: That in such questions, where the indigence of a party renders him unable to defray the expence of an appeal, the justice of the house of peers had provided a remedy, by putting the party upon the pauper's roll; for the benefit of which you may apply, if you think that injustice has been done to you. That if the subject-matter had rendered your petition proper to be laid before his majesty, you have not furnished the materials necessary to accompany it, a full state of the proceedings; whereas you have only transmitted the papers given in to court

“ on

" on your behalf. I am, Sir, your most obe
 " ent humble servant,

WM FRASER

Addressed, To Mr James Gilkie, &c

June 15. 17

Unto the right honourable the Lords of Council and Session

T H E
 P E T I T I O N
 O F

JAMES GILKIE Brewer and Distiller in Dunfermline

Humbly sheweth,

THAT the petitioner had the misfortune last session to lose a cause, which he had before your Lordships, at his instance against the sheriff-depute of Berwickshire and his substitute, James Lorain, their clerks &c. anent a pocket of hops which was abstracted from the petitioner's brewerie.

That your petitioner was advised to apply to the parliament for redress; but from various sufferings and litigations with the sheriff, &c. became so far reduced in his circumstances, as entirely to be disabled from affording the necessary expence of it whereupon, he presumed to transmit a petition

on to his Majesty, under cover of a letter
 dressed to his excellency the Earl of Suf-
 k, his Majesty's secretary of state, who
 &c. is pleased to return the following answer.

[Here the above letter was narrated.]

Your petitioner being about to follow the
 method prescribed by the above letter, holo-
 graph of, and signed by the under secretary
 of state, finds it necessary for him to sup-
 plicate your Lordships for obtaining an ex-
 tract of the decret of absolvitor pronounced
 against him.

May it therefore please your Lordships,
 to grant your petitioner the benefit of
 your *gratis* warrant, for obtaining said
 extract, as he is under the necessity of
 proceeding *in forma pauperis* before the
 house of peers, being the remedy
 pointed out by the secretary's letter to
 your petitioner.

According to justice, &c.

JA. GILKIE.

Edinburgh, June 16. 1773. "At moving
 his petition, James Gilkie present at the
 bar, was asked by the court, if any peti-
 tion of appeal had been presented to the
 house of Lords, with relation to the cause
 within mentioned, or any appeal entered,
 and he having answered in the negative,
 the Lords refuse the petition." (Signed,
 DUNDASS. I. P. D.)

To the right honourable the Lords spiritual
temporal, in parliament assembled,

THE
PETITION and COMPLAINT
OF

JAMES GILKIE Brewer and Distiller in Dun-

Humbly sheweth,

THAT the complainer, in the course
business, commissioned from Messrs
Atkinson and Hall, merchants in Newcastle
a pocket of their best hops, which was
cordingly sent along with the following
letter.

Newcastle, Oct. 10. 177

“ Mr James Gilkie bought of Atkinson
and Hall, a pocket of Newcastle
1 cwt. 2 gr. 2 lib. L. 7:11:10.

S I R,

“ We have yours of the 1st instant;
“ have sent as above, per Wilson; and
“ our opinion that hops of such quality
“ be dearer: you may have a brown

at L. 4: 15: we will be glad to serve you; and are,

Your humble servants,

ATKINSON and HALL."

Directed, To Mr James Gilkie, Dunse.

The hops were delivered with the above letter, at the complainer's brewery, but were afterwards stole from it, and the thief and setter refused to be punished by Sir John Stewart sheriff-depute of Berwickshire, and his substitute and clerk, &c. in so far as they refused either to restore the hops or punish the thief and reset, but gave way to falsification and fabricated letters from said Atkinson and Hall, whom they invited to join and take part with the thief and reset: finally, gave away the complainer's hops to another brewery, although he had found caution for the price; by which a destructive blow was given to the complainer's character and credit, and his then flourishing brewery was blocked up, which, prior to this fatal period, paid the revenue L. 70 Sterling every six months.

That the complainer, by the advice of the ablest counsel, brought an action before the Court of Session, against the sheriff and his substitute and clerk, who, from malicious motives, had barefacedly perverted the laws,
O and

and committed gross and glaring iniquity and their Lordships, after repeatedly ordering them to account for their conduct, (the several iniquitous acts being referred to their oaths), yet the Court of Session refused the same, and every other proof offered to be brought by the complainer. Nay further they threatened the petitioner with corporal punishment, for exhibiting certificates of his character, by numbers of gentlemen of the county, which he was forced to adduce in order to wipe off the illicit attacks made against his character and credit in the course of this process; and, in the end, to the annoyance of the whole country, and in particular the trading part thereof, their Lordships assailed the defenders, and found the complainer liable to them in high damages.

The petitioner thus robbed, and his family ruined, under colour of law, saw no means of relief on the north of the Tweed; in a desponding condition, presumed, out of his ignorance, to petition his Majesty for redress; which petition he received the sympathetic and gracious answer, insert page 101.

That the petitioner being about to follow the method prescribed by the above letter applied to the Court of Session, praying the Lordships to grant him the benefit of the *gratis* warrant, for obtaining the extract of the process, as he was under the necessity of proceeding in *forma pauperis*, before the high court

court of parliament : Upon advising of which petition, their Lordships were pleased to pronounce the foregoing interlocutor, page 103.

That the petitioner humbly begs leave to state his reasons against the said interlocutor.

1^{mo}, He represented to the court, that it was impossible for him to have the benefit of the remedy pointed out by the secretary's order, that is, to be put upon the *paupers* all, unless he previously had the materials to show the *probabilis causa litigandi*.

2^{do}, In his present reduced situation, he could enter no appeal unless he found caution, which was impossible for him to procure.

3^{io}, The denying the extract, being the materials, without which he could not have the benefit prescribed, was in effect barring the petitioner from carrying his wrongs for review in parliament.

May it therefore please the Lords Spiritual and Temporal, in Parliament assembled, to order the Court of Session in Scotland, to deliver to the petitioner the extract of the whole procedure in the foresaid action, or grant warrant for transmitting the original process to your clerk, so that the petitioner may have the injustice complained of reviewed by
your

your Lordships in *forma pauperis*, and
your petitioner shall ever pray.

J. A. GILKIE.

*Answer from the Clerk of Parliament, returned
inclosed the above petition, directed to Mr Gilk*

S I R,

INCLOSED, I have sent back your paper
as no petition to the House of Lords, pre-
sented till after the appeal is received
the House, nor can the petition you have
sent up be presented till such time as you
have lodged your appeal. I am,

S I R,

Your humble servant,

(Signed) SAML. STRUTT
Clerk-assistant
the House of Lords

*Parliament-Office,
12th Jan. 1774.*

I have sent you the form to be observed
your application to the Lords, to be ad-
mitted as a *pauper*.

The form of proceeding in *forma pauperis* before the House of Peers.

A poor party may be admitted in *forma pauperis*: to obtain which admission, the *pauper* must put in a petition, accompanied by an affidavit of poverty, and also by a certificate from the minister and two of the church-wardens (in Scotland called elders) of the parish where the party resides.

The petition of a *pauper* may be in the following form.

the right honourable the Lords Spiritual and Temporal, in parliament assembled,

The humble petition of C. D.

Sheweth,

That your petitioner being very poor, as the affidavit and certificate annexed appears, and being served with an order made by your Lordships upon the petition and appeal of A. B. is, by reason of such her poverty, unable to make her defence as respondent to the said appeal, unless she is by your Lordships ordered to be admitted so to do in *forma pauperis*.

Your petitioner therefore most humbly prays your Lordships will be pleased to order her to be admitted to defend as respondent in this cause in *forma pauperis*, and to assign her for her counsel Mr A. B. and C. D. and for her solicitor E. F.

And your petitioner shall ever pray, &c.
The

The affidavit to be produced with the petition, may be of the purport and following.

A. B. appellant.
C. D. respondent.

The respondent maketh oath, that she not worth in all the sum of five pounds lands, tenements, goods or chattels, wearing apparel, and the matters of cause only excepted,

C. D.

Sworn before me one of his Majesty's justices of the peace for the county of this day of 17

E. F. I. R.

The certificate may be as followeth.

These are to certify all whom it may concern, that C. D. is a very poor woman.

G. H. minister of the parish of
and county of

I. H. church-warden.

If the pauper be in London, there will be no occasion for producing with the petition an affidavit in writing, or a certificate, in such case the party may make affidavit to the poverty in person, at the bar of the house, which the house, at

reading

ing the petition, will call upon the petitioner to do. If the petition is to be put with this view, it may be worded thus: That your petitioner being very poor, is ready to make affidavit to her poverty, at your Lordships bar, and being served with an order of appeal," and so forth, as in the former petition.

The above forms suppose the *pauper* to be respondent to an appeal; but where the petitioner is to be an appellant, complaining of a decree made by a court below, then, besides an affidavit and certificate of poverty, he or she ought to have and exhibit a certificate, under the hands of two counsel, notwithstanding the decree, order or interlocutors made against him, or her, it appears to them (the counsel) that he or she has a good and probable ground for proceeding.

CHAP.

C H A P. VIII.

The conclusion.

THE various instances of oppression exercised against myself, and the distress brought upon my family by these, which I considered as arising from prejudice, &c. and no way supported by the spirit or meaning of the laws, induced me to publish an impartial state of my uncommon case, and procedure held therein, both for the ease of my own mind, and to remove unfavourable impressions the credulous might entertain to my prejudice, who are but too ready to condemn, without a fair hearing and examination into the merits of the case.

The more I reflected on the subject, many ideas crowded into the mind, and excited such detestation against tyranny and oppression, as occasioned the writing the chapter of this treatise, in order to show the deformity of vice and immorality, (more especially in persons raised to the height of preferment in a state,) and the terrible calamities brought upon society, from such persons allow themselves to be actuated by their passions and humours, and not by the spirit of the laws of their country; and such actions were justly detested by heaven.

who had only the law of nature for the rule of their conduct, much more ought the like crimes to be abhorred by Christians, the light and knowledge, against which a Christian acts, being so much greater.

The observations in chap. 3. concerning property, and the preservation thereof, are partly my own, and partly taken from good authorities. Though I have been oppressed in various instances, by some persons in the shire of Berwick, as above narrated, I could not help considering myself as guilty of the blackest ingratitude, if I were not to retain the highest regard for the other inhabitants of that county; more especially, when it is considered, that no other consideration or motive, than a just sense of the hardships I underwent, could prevail with them to sympathise in my sufferings, being not only debarred to provide for myself and family in the way I was bred, but also having my property torn from me.

In testimony of esteem and regard, I propose soon to publish for their use, a short system of law, by way of question and answer, founded on justice and equity; which, I presume, may be of great benefit and advantage to many; as it will not only contain proper directions how to avoid law-suits, with instructions to such as unfortunately happen to be concerned therein, how to ex-

tricate themselves out of it ; but also pro-
 directions to such, whose busineses ob-
 them to know the law, and have the
 fortune to be endued with weak car-
 ties.

The reader will be far mistaken, if he
 pected, that the design of this treatise
 to malign particular characters. If
 have suffered by a simple rehearsal of
 upon record, 'tis no blame of mine; and
 heartily with these stubborn facts had ne-
 existed. The author and his family
 alas! suffered more by feeling their
 than those characters possibly can by
 detail. Upon the whole, I only mean
 the foregoing may serve as a mirror to
 present generation as well as to posterity
 that they may see their danger, and not
 on the rocks I have done. And though
 Nero impiously wish'd the whole Roman
 empire had but one neck, that he might
 strike them off at one blow ; I, on the
 verse, wish that all men's vices were
 mended, or for ever sunk in oblivion,
 that the forgiveness of Heaven may be
 tended towards every individual of the
 man race ; and wish for nothing more
 self, than to live and die in peace with
 men.

F I N I S.

